910.

SUPREME COURT OF THE UNITED STATES

No. 143.

WILLIAM EMERSON, AMOS M. ROBERTS, ISAAC FARRAR, JOSEPH W. MASON, AND NICHOLAS G. NORCROSS, APPELLANTS,

vs.

JOHN DOGGETT.

ON APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MAINE.

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MAINE DISTRICT, *ss:*

At a circuit court of the United States, for the first circuit, begun and holden at Portland, within and for said district, on Thursday, the first day of October, in the year of our Lord one thousand eight hundred and forty-six.

Present, the honorable Levi Woodbury, associate justice of the Supreme Court, and the honorable Ashur Ware, district judge.

JOHN DOGGETT, plaintiff in equity,
vs.
WILLIAM EMERSON and others, defendants.

On the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-one, the following bill in equity was filed in said court, by T. P. Chandler and George W. Cooley, esquires, solicitors for the plaintiffs, viz:

To the honorable the justices of the circuit court of the United States of America, for the first circuit, within and for the district of Maine, sitting in equity.

Humbly complaining, showeth unto your honors, your orator, John Doggett, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, who is a citizen of the said State of Massachusetts, one of the United States of America, that on or about the twenty-first day of February, in the year eighteen hundred thirty-five, William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, all of Bangor, in the county of Penobscot, and State of Maine, merchants, who are all citizens of the said State of Maine, one of the United States of America, defendants hereinafter named, bargained for and purchased of the State of Maine a township of land, numbered three, in the thirteenth range of townships west from the east line of the State, containing, exclusive of land covered by water, and the public lots reserved by the State, nineteen thousand eight hundred and twenty-five acres; that the said purchasers agreed to pay therefor to the said State sixty-four thousand four hundred and thirty-one dollars and twenty-four cents, it being three dollars and twenty-five cents per acre; one-third part of which they paid in money at the time of the purchase, and for the remainder they gave their joint notes, which remain unpaid up to the time of filing this bill of complaint; that the said purchasers did not take a deed of conveyance of the said land, but made an agreement with the land agent of the said State, through whom the said purchase was made, whereby the said agent bound himself to convey the said land to the said purchasers, or their assigns, when requested so to do.

And your orator further showeth, that the said Roberts, Farrar, Nor-

cross, and Mason, agreed with the said Emerson, at the time of the said purchase, or shortly thereafter, that he, the said Emerson, should act as the agent of the company in selling the said land, and parts and portions thereof; which the said Emerson agreed to do.

And your orator further showeth, that a short time after the said purchase, as your orator believes, some time in the month of May, in the year eighteen hundred thirty-five, but the exact time your orator does not know, the said Emerson, as well for himself as on account of his said associates, gave to one John Williams, then of the State of New Hampshire, but now of the State of New York, a certain bond or obligation, or power of attorney, wherein and whereby the said Emerson bound himself and his said associates, to procure a conveyance of the said land to be made to the said Williams or his assigns, on being paid therefor the sum of six dollars and fifty cents per acre; the sole object of which said obligation was to enable the said Williams to make sale of the said land on account of the said Emerson and his said associates; but your orator not having the said obligation or a copy thereof, is unable to set forth its exact terms.

And your orator further showeth, that the said Emerson, as agent as aforesaid, both before and at the time of executing the said instrument, stated to the said Williams, that the said township contained twenty-two thousand and forty acres, besides the public lots reserved by the State, and gave the said Williams distinctly to understand, that he, the said Emerson and his said associates, actually paid the said State for twenty-two thousand and forty acres; whereas, in truth and in fact, the said State, in selling to the said Emerson and his said associates, deducted from the whole quantity of land in the said town two thousand two hundred and fifteen acres, so much thereof being covered with water, and having no timber thereon; and the said Emerson and his said associates paid the said State, in money and notes as aforesaid, for nineteen thousand eight hundred and twenty-five acres only as aforesaid. And the said Emerson, as agent as aforesaid, at the time of executing the said obligation to the said Williams, delivered to the said Williams, for the purpose of enabling him to sell the said land, certain certificates or statements made by persons who had explored and examined the said township, with the view of ascertaining the quantity of timber thereon, which certificates represented and set forth that the said township was one of the best timbered tracts in the State of Maine, and that the quantity of good sound merchantable pine timber thereon would average eight thousand feet to the acre throughout the township; making the whole quantity of sound merchantable pine timber on the said township one hundred and seventy-six millions three hundred and twenty thousand feet.

And your orator further showeth, that on or about the eighth day of June, in the year eighteen hundred and thirty-five, the said John Williams, as the agent of the said Emerson, Roberts, Farrar, Norcross, and Mason, as aforesaid, applied to your orator, and proposed to sell to him a portion of the said township, and represented and stated to your orator

that the said township contained twenty-two thousand and forty acres; that it was the best timbered township in the State of Maine, and that it contained eight thousand feet of good sound merchantable pine timber to the acre; the whole quantity of good timber as aforesaid on the township, exceeding one hundred and seventy-five millions feet. And in confirmation of his said statements, the said Williams exhibited to your orator the said certificates, received of the said Emerson as aforesaid, and certain other certificates of a like character, all of which represented and affirmed that the said township would not produce less than eight thousand feet of good pine timber to the acre as aforesaid. And the said Williams, on the said eighth day of June, when treating with your orator as aforesaid, stated, that he had on that day made sale of four-tenths of the said township to some gentlemen in Portsmouth, at the rate of six dollars and fifty cents per acre; that the said obligation from the said Emerson would expire by limitation on that day; and if your orator desired to purchase any part of the said land, the bargain must be immediately completed; that the said land could be had for six dollars and fifty cents per acre, and no less; and that the whole purchase money would be paid to the said Emerson.

And your orator further says, that this treaty with the said Williams was had at Stillwater, near Bangor, in the State of Maine, at a great distance from the said township, and under circumstances rendering it impracticable for your orator to go upon and explore the said land, all of which was known to the said Williams.

And your orator further showeth, that confiding in the statements of the said Williams, and in the evidence he exhibited in regard to the quantity and quality of the timber on the said land, and in regard to the quantity of land in the said township, owned by the said Emerson and others, and believing the statements to be true, your orator concluded to purchase one-eighth part of the said township, at the price named by the said Williams; and accordingly, the said Williams, on the said eighth day of June, informed the said Emerson, Roberts, Farrar, Norcross, and Mason, of his said treaty and negotiation with your orator, and that your orator had concluded to purchase and give his notes for one-eighth part of the said township, at six dollars and fifty cents per acre, estimating the township at twenty-two thousand and forty acres, exclusive of the reserved lots. And the said Emerson, Roberts, Farrar, and Norcross and Mason, on the said eighth day of June, upon being so informed, approved of the acts and doings of the said Williams in the premises, and on the same day obtained from the land agent of the State of Maine, at his office in Bangor, a deed of conveyance to your orator of the said eighth part of the said township in common and undivided, and delivered the same to the said Williams to be delivered to your orator, and the said Williams did, on the same day, deliver the said deed to your orator; whereupon, your orator, on receiving the said deed, executed and delivered to the said Williams his several notes and drafts to the amount of seventeen thousand nine hundred and

seventy dollars and sixteen cents, all payable to the said Emerson, and all on interest.

And your orator further showeth, that the said Emerson, Roberts, Farrar, Norcross, and Mason, contriving how to wrong and injure your orator in the premises, fraudulently concealed from your orator the actual quantity of land purchased by the said Emerson and others of the said State; and fraudulently concealing from your orator, that the said State, in selling to the said Emerson and his associates, had deducted from the whole quantity of land in the said township two thousand two hundred and fifteen acres, on account of a portion of the said township being covered with water, and having no timber thereon, and representing that they purchased twenty-two thousand and forty acres, received from your orator as aforesaid, on the said eighth day of June, his notes for one-eighth part of twenty-two thousand and forty acres, at six dollars and fifty cents per acre.

And your orator further says, that all the notes and drafts, so given by him to the said Emerson, have been paid by your orator in full, both principal and interest.

And he further showeth, that he became the purchaser of the said land solely for the timber represented to be thereon, and that the said land, without timber, is worth to your orator little or nothing; all of which was well known to the said Williams, and Emerson, Farrar, Roberts, Norcross, and Mason.

And your orator further states, that some time after the said purchase by him as aforesaid, and after paying his drafts and notes, given to the said Emerson as aforesaid, to wit, in the month of July, in the year eighteen hundred and forty-one, your orator discovered, for the first time, that the said tract of land did not contain the quantity of merchantable timber represented by the said Williams to be thereon, nor the quantity of good merchantable timber represented by the said explorers as aforesaid; but that, on the contrary, on a thorough examination of the said township since made, it has been ascertained, that there is but little or no sound merchantable timber on the said tract, and the said land is almost worthless, and the said parties acted in the sale and purchase of the said eighth part of the said township under a mutual mistake in regard to the quantity and quality of timber on the said land; or else that the said Williams, Emerson, Roberts, Farrar, Norcross, and Mason, fraudulently deceived your orator in the premises, and wilfully misrepresented to him the quality and quantity of the timber thereon.

And your orator further showeth, that the said Williams, Emerson, Farrar, Roberts, Norcross, and Mason, fraudulently deceived your orator in regard to the quantity of land in the said township bargained for by the said Emerson and others as aforesaid, inasmuch, as by their fraudulent acts as aforesaid they induced your orator to purchase and pay for more timber land than the said township actually contained, or than was purchased by the said Emerson and his said associates; which fraud was first discovered by your orator in the month of July, eighteen hun-

dred forty-one. And your orator, in view of all the facts hereinbefore set forth, being advised that the said purchase of the said eighth of the said township made by him ought not to remain, but that the same should be rescinded, has often requested the said Emerson, Roberts, Farrar, Norcross, and Mason, to rescind the same, and pay back to your orator all the money so as aforesaid paid by him, and to restore your orator entirely, and be restored to the original position of the respective parties; and, in particular, that they would refund to your orator the amount paid by your orator for that portion of his said eighth part of the said land which is covered by water, and which the said Emerson and his said associates fraudulently obtained pay for as aforesaid. And your orator well hoped that the said Emerson, Roberts, Farrar, Norcross, and Mason, would have complied with such your orator's reasonable request, as in justice and equity they ought to have done; but now, so it is, they refuse so to do, and in concert with each other, they pretend that there was no mistake between the parties in the bargain and purchase hereinbefore set forth, in regard to the quantity or quality of timber on the said land, and that no fraud was practised on your orator, either in regard to the quantity or quality of the timber on the said land, or in regard to the quantity of the said land, the contrary of which your orator expressly charges to be true; and, as evidence of the facts hereinbefore set forth, he further states, that on the thirty-first day of March, in the year eighteen hundred and forty-one, the Legislature of the State of Maine passed certain resolutions, appointing certain persons therein named commissioners for the purpose of examining the equitable claims of any person or persons praying to be relieved from the payment of any moneys due to the said State for the purchase of land sold after the first day of January, in the year eighteen hundred thirty-four, and empowering such commissioners, on a full examination of such cases, to make a written report to the land agent, directing him to settle and adjust such claims in such way and manner, and upon such terms, as to them should seem just and equitable; the resolutions requiring each applicant to make out and file with the land agent a statement of his case. The particulars of which resolutions will more fully appear by reference thereto. That, on the twenty-ninth day of April, eighteen hundred and forty-one, the said Emerson, under the said resolutions, filed in the land office of the State of Maine his petition, as follows:

To the honorable board of commissioners, appointed by the resolves of March thirty-first, eighteen hundred forty-one, to settle claims between certain individuals and the State.

The memorial of William Emerson, of Bangor, in the county of Penobscot, esquire, respectfully showeth, that on the twenty-first day of February, A. D. eighteen hundred thirty-five, your memorialist, together with Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, by the style and name of Norcross and Mason, all of said Bangor, merchants, purchased of the State township number

three, range thirteen of townships west, from the east line of the State, containing nineteen thousand eight hundred and twenty-five acres, at three dollars and twenty-five cents per acre. That they paid in cash, at the time of the purchase, twenty-one thousand four hundred and seventy-seven dollars and eight cents, and gave their notes for the balance, being two-thirds the amount of the purchase, on which the sum of four thousand two hundred and thirty-nine dollars and thirty-nine cents has since been paid, making a sum total of twenty-five thousand seven hundred and sixteen dollars and forty-seven cents, received by the State on account of said town. The purchase was made without the purchasers having seen said town, and without any other knowledge of its quality than the representations of the State's agent, who assured the purchasers that by the report of Joseph L. Kelsey, made by the direction of honorable Daniel Rose, land agent, in eighteen hundred thirty-one, the town contained eighteen million feet of merchantable pine timber of the first quality; that he had no doubt the estimates would rather overrun than fall short, as the State's surveyors were expected to be very cautious in their estimates. Relying upon these statements, and at the same time informing the agent that they had no knowledge of the town other than his representations, they made the purchase. There has been no timber cut, and the town remains in the same condition as when purchased. The State has sold the best timber lands in this section, the last two years, at prices varying from one dollar to one dollar and twenty-five cents per acre, and picked lots in number four, in the thirteenth range, a town lying directly north of number three; and said selected lots being greatly superior to number three, were sold by the agent, in eighteen hundred thirty nine, at one dollar and twenty-five cents per acre. Upon examining the town for the purpose of operating, they found the timber so defective as to be nearly worthless. Large groves of pine, which had a fair appearance, and would be likely to deceive a person not well acquainted with lumbering, were found upon inspection to be so rotten as to be unfit to cut; and, after a thorough examination, they could not find a chance to put in more than one team for a winter's logging upon merchantable timber. Instead of eighteen million, the town does not contain three million, probably not one million, of merchantable lumber of the first quality.

Your memorialist would further represent, that the town was purchased exclusively for timber, and that the soil at such a distance from settlements and roads is comparatively worthless. This town was estimated by Milford P. Norton, esq., land agent, in eighteen hundred thirty, to be worth twenty-five cents per acre. This communication was made to the governor and council, and filed away in the vaults attached to the secretary's office, and its existence was unknown at the land office until the present year. This price probably bears as large a ratio to the actual amount of timber of the first quality as three dollars and twenty-five cents does to the amount certified to by Mr. Kelsey, then in the employ of the State; and your memorialist would be equit-

ably entitled, upon this principle, to have a large portion of the payment already made to the State refunded. But he has no expectation, nor does he ask the State to pay back any part of the money already received. The State, however, still holds notes of your memorialist to a large amount, given for said town in exchange for the original notes, and secured by mortgage, he having assumed the whole debt to the State; and said Roberts, Farrar, and Norcross, and Mason, having released to him all claims against the State for deduction or otherwise, in consideration of said transaction.

Your memorialist, therefore, as the representative of the original purchasers, believing himself entitled, upon every principle of equity, justice, and expediency, to have the notes held by the State against him for said town cancelled, and his mortgages to the State on account of said notes discharged, makes this request of your honorable body, and files this brief statement of his case, agreeably to the provisions of the "resolves for the appointment of a board of commissioners to settle claims between certain individuals and the State," approved March thirty-first, eighteen hundred and forty-one, and a resolve additional to said resolve.

Signed, WILLIAM EMERSON.

Bangor, April 29, 1841.

And the said commissioners afterwards, on the twentieth day of July, eighteen hundred forty-one, made their report touching the said matters, as follows:

To Elijah L. Hamilton, esq., land agent of the State of Maine:

The undersigned commissioners, appointed by certain resolves of the Legislature of the State of Maine, approved the thirty-first day of March, A. D. eighteen hundred forty-one, and the sixteenth day of April, eighteen hundred forty-one, "to settle the claims between certain individuals and the State," having given notice, as in and by said resolves is required, and, in pursuance thereof, having assembled at the court-house in the city of Bangor, on the twelfth day of July, A. D. eighteen hundred and forty-one, and continued in session, by ajournment from day to day, to the time of signing these presents.

On the memorial of William Emerson, duly filed in the land office of said State, after having heard the evidence on the part of the memorialist, and the arguments of his counsel, and of the attorney general thereon, we find that the said Emerson, together with Amos M. Roberts, Isaac Farrar, and Messrs. Norcross and Mason, on the twenty-first of February, eighteen hundred thirty-five, contracted with the then land agent of the State for the purchase of township number three, in range thirteen, agreeing to pay therefor sixty-four thousand four hundred thirty-one dollars and twenty-four cents, one third of which, viz., twenty-one thousand four hundred seventy-seven dollars and eight cents, was at that time paid by the contractors, in equal quarters, and the residue secured by their joint notes. That Norcross and Mason were to be interested in one quarter, and the others in a quarter each. No deed was at that time taken, and Emerson was employed by his associ-

ates to make sale of their rights, to wit, of their three-quarters, which he effected, through the instrumentality of John Williams, at the rate of about thirty thousand dollars for each quarter. And thereupon procured conveyances to be made by the then land agent for the State, viz., to John Doggett of five fortieth parts, to Cyrus Goss of four-fortieth parts, to John Williams of five fortieth parts, and to Bartlett and others of sixteen fortieth parts, making three-fourths of said township, the said Emerson retaining his right to the other quarter part, which was not conveyed to him till some time in eighteen hundred thirty-seven. Farrar and Roberts received of Emerson their shares of what was realized for the three-fourths of the township sold as aforesaid. But the said Norcross and Mason received the amount due for their share in said Emerson's securities, and then, or subsequently, paid said Emerson the amount of the money due to the State from them for their part of the land, which Emerson thereupon assumed to pay. We find that subsequently, and before the negotiation hereafter stated, the said Emerson had received of the said Roberts the full amount of his proportion of the notes due to the State, viz., eleven thousand two hundred thirty-eight dollars and twenty-nine cents, with such interest as was due thereon at the time of receiving the same; and also of said Farrar what was due to the State from him towards his share of said notes, viz., seven thousand one hundred dollars, he having paid to the State towards the same all but that sum. We find that, in eighteen hundred thirty-seven, Emerson, then being under obligation to pay the whole amount due on said notes, gave his individual security therefor, securing the same by mortgage, and received in exchange therefor the joint notes of the original contractors. We further find that said township, at the time of said contract and sale, did not contain pine timber of a sound and valuable quality to the amount of more than one-fourth part of what was estimated in the survey and field notes of the surveyor Kelsey, so that the township was much less valuable than either the land agent, who sold the same, or the contractors for the purchase, had reason to suppose, and that therefore the bargain was made under mutual mistake between the parties; inasmuch that we feel satisfied more money has been paid to the State than the land was reasonably worth. And we believe it to be just, equitable, and expedient, that the grantees and their assigns should have the full benefit of all that now remains due from the said Emerson to the State therefor. We further find, that the said Emerson has never parted with his quarter part of said township, otherwise than by mortgaging it to the State as part of the collateral security for the payment of his said notes, and that said Emerson is the legal assignee of one other eighth part of said township, except that it is mortgaged to the State as further collateral security for the payment of his said notes. We further find, that said Isaac Farrar is at this time the legal owner of eleven fortieth parts of said township, whereby he would become entitled to eleven fortieth parts of the benefits of whatever may be deducted from the amount due from said Emerson to the State; but he having assigned all his claim to the benefit of any such deduction to

said Emerson, we consider the said Emerson to be the equitable assignee thereof; whereupon, we deem it just, equitable, and expedient, that a deduction from the amount due from the said Emerson on his said notes should be made equal in amount to twenty-six fortieth parts of forty-two thousand nine hundred and fifty-three dollars and sixteen cents, being the amount for which notes were originally given by the contractors as aforesaid, with interest thereon from the time when the same notes were originally given. And we accordingly order and decree that the deduction be made accordingly, and that, on payment of the residue of the said Emerson's notes, the same be delivered up to him to be cancelled.

Done at Bangor, this twentieth day of July, 1841.

(Signed) EZEKIEL WHITMAN,
FREDERIC H. ALLEN,
ANSON G. CHANDLER.

And the said amount of twenty-six fortieth parts of forty-two thousand nine hundred and fifty-three dollars and sixteen cents has since been indorsed on the notes of the said Emerson by the land agent, in compliance with the said report.

All which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the wrong and injury of your orator in the premises. In consideration whereof, and for as much as your orator is remediless, according to the strict rules of the common law, and can only have relief in a court of equity, where such matters are properly recognisable and relievable: To the end, therefore, that the said Emerson, Roberts, Farrar, Norcross, and Mason, may, upon their several respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and more especially that the defendants may, in manner aforesaid, answer and set forth, whether the said purchase of the said State was not made in manner aforesaid, or how otherwise; what were the respective interests of the said defendants in the said purchase of the said land; whether the said Emerson was not appointed the agent of the said defendants for the purpose of effecting a sale of the said township, or how otherwise; what were the terms and conditions of the said contract or obligation so given to the said Williams; set forth a copy thereof, or state its contents as nearly as can be recollected, if no copy can now be had; whether the said obligation is now, or has been since its execution, in the hands of the defendants, or either of them, and where the same now is; whether any and what representations were made to the said Williams in regard to the quantity of timber on, or supposed to be on, the said township by the said Emerson, or either of the said defendants; whether any and what certificates or statements, in regard to the quan-

tity of timber on the said land, were given to the said Williams by either of the said defendants, and when and for what purpose were they so given; what were the certificates; what quantity of timber did they represent to be on the said township; by whom were they made; what quantity of good timber was supposed by the defendants to be on the said township when they bargained for the same of the State; what certificates or evidence in regard to the quantity of timber were exhibited to the defendants by the land agent at the time of their purchase; what representations were made by the land agent in regard to the quantity of timber on said land at the time of the said purchase; was the said land purchased by the defendants principally for the timber supposed to be thereon; whether land in that section of the State is considered principally valuable for its timber; what deduction was made from the quantity of land in the said township on account of water; what price per acre did the defendants agree to pay for the said land to the State; how much has been paid; what amount has been discounted from the notes held by the said State on account of a mistake in the quantity of timber supposed to be on the said land; what amount of notes and drafts did the complainant give to the said Emerson for one-eighth part of the said land; at what price per acre did he purchase of the defendants; are any of the said notes outstanding against the complainant, and unpaid; if so, where are they, in whose hands, and what amount due thereon; have any and what explorations of the said land been made since the purchase by the complainant; if so, when, by whom made, and for what purpose; what quantity of timber is now found to be on the said tract; what is the quality of the timber; what is the present value of the land without the timber, and what with the timber now on it; does the land now contain any considerable quantity of good sound merchantable timber; suppose the land to contain three millions of good pine, what is its value; state particularly, according to their respective knowledge, information, and belief, the actual quantity of good merchantable timber now on the said land, and whether any has been taken off since the sale to the complainant; and, if so, how much, and when taken off; whether the statements made in the said Emerson's petition to the said commissioners are true or not; and, if not true, in what particulars are they untrue; whether the said report to the said land agent was so made by the said commissioners; whether any and what endorsements have been made on the said notes of the said Emerson to the said State, given for the said land? And that, upon a full and fair disclosure of the several matters aforesaid, the said purchase may be declared to be null; the said Emerson, Roberts, Farrar, and Norcross and Mason, compelled to refund to your orator all moneys by them or either of them received as aforesaid, and that the parties may be restored to their respective positions before the said contract was entered into; your orator hereby offering to perform all acts necessary for him to perform in the premises; and that your orator may have such further relief, or such other relief in the premises, as the nature of his

case may require, and as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator your writ of subpœna, directed to the said William Emerson, Amos M. Roberts, Isaac Farrar, Nicholas G. Norcross, and Joseph W. Mason, commanding them to appear before your honors in this honorable court, at a certain day, and then and there full, true, direct, and perfect answer make to all and singular the premises; and further to stand to, perform, and abide such further order and decree therein as to your honors shall seem meet.

And your orator will ever pray.

JOHN DOGGETT.

J. P. CHANDLER,
Solicitor for the complainant.

GEORGE W. COOLEY,
Of counsel for the complainant.

Whereupon the following subpœna issued, viz:

The President of the United States of America, to William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, all of Bangor, in the county of Penobscot, and State of Maine, merchants and citizens of the State of Maine, greeting: [L. S.]

For certain causes offered before the circuit court of the United States for the first circuit, as a court of chancery.

We command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before the said circuit court next to be holden at Wiscasset, within and for Maine district, on the first day of October next, to answer concerning those things which then and there may be objected against you by John Doggett, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, and a citizen of the State of Massachusetts; and to do further and receive that which said court shall do and order in this behalf. And this you are in nowise to omit; and have you there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States of America, at Portland, the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-one.

J. MUSSEY, *Clerk.*

Which subpœna is returned with the following endorsement thereon, viz:

"MAINE DISTRICT, *ss:*

September 16, A. D. 1841.

By virtue of this precept I have this day summoned the within named William Emerson, Amos M. Roberts, Isaac Farrar, and Joseph W. Mason, to appear as within, by delivering to each of them an attested

copy of this precept; and I then delivered an attested copy of the same to the wife of Nicholas G. Norcross, at his dwelling-house, he being absent on a journey.

JOHN D. KINSMAN,
Marshal of Maine.

And on said first day of October, the said Emerson, Roberts, Farrar, and Mason, defendants, entered their appearance by Jonathan P. Rogers, their solicitor, and said cause was thence continued.

On motion of plaintiff's solicitors the following subpœna issued, viz:

The President of the United States of America, to Nicholas G. Norcross, [L. S.] of Bangor, in the county of Penobscot, and State of Maine, merchant, and a citizen of the State of Maine, greeting:

For certain causes offered before the circuit court of the United States for the first circuit, as a court of chancery, we command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before the said circuit court, next to be holden at the office of the clerk of said court, at Portland, in said Maine district, on the first Monday of December next, at ten of the clock in the forenoon, to answer concerning those things which then and there may be objected against you by John Doggett, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, and a citizen of the State of Massachusetts; and to do further and receive that which said court shall do and order in this behalf. And this you are in no wise to omit. And have you there this writ.

Witness the honorable Roger B. Taney, chief justice of the United [L. S.] States of America, at Portland, the fifteenth day of November, in the year of our Lord one thousand eight hundred and forty-one.

J. MUSSEY, *Clerk.*

Which subpœna is returned with the following endorsement thereon, viz:

November 18, *A. D.* 1841.

MAINE DISTRICT, *ss:*

By virtue of this precept I have this day summoned the within named Nicholas G. Norcross to appear as within, by delivering an attested copy of this precept to his wife, at his dwelling house, he being absent in the woods.

JOHN D. KINSMAN,
Marshal of Maine.

And now the time having arrived, to wit, the first Monday of March, A. D. eighteen hundred and forty-two, for said defendants to answer the plaintiff's bill, according to the rules of said court, they severally answer thereto as follows, viz:

The several answer of William Emerson:

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many

errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereto, he answers and says, that on or about the twenty-first day of February, A. D. eighteen hundred thirty-five, he purchased in common and undivided with said Roberts, Farrar, Norcross, and Mason, of the State of Maine, township numbered three, in the thirteenth range of townships west from the east line of the State, which township contained, according to said purchase, exclusive of land covered by water and the public lots, nineteen thousand eight hundred and twenty-five acres; that these defendants paid therefor the sum of sixty-four thousand four hundred and thirty-one dollars twenty-four cents, being three dollars and twenty-five cents per acre, exclusive of land covered by water and public lots; one-third part of which they paid in money at the time of the purchase, and for the remainder they gave their joint notes, which, in December, A. D. eighteen hundred thirty-seven, were paid by this defendant, by substitution of his own notes, secured by mortgage for the same amount. And that these defendants received from the land agent of said State an agreement to convey said township, which said agreement is annexed to the answer of Isaac Farrar, one of these defendants, and makes a part thereof; the land covered by water, and public lots aforesaid, were deducted from the contents of said township in our purchase of the State.

And this defendant further answering says, that he was by a certain writing, the original copy of which is annexed to the answer of Amos M. Roberts, and forms a part thereof, constituted this defendant an agent of these defendants according to the terms thereof; and that afterwards, and prior to the sale of the premises, as is hereinafter set forth, said writing was so modified (verbally, as this defendant thinks, for upon examination he is unable to find any written qualification of said authority) as to authorize the said Emerson to dispose of these defendants' interests in said township for a sum not less than one hundred and twenty thousand dollars, one-third in cash at the time of sale, and the residue thereof in one and two years thereafter; and this defendant says, that said written agreement, qualified as aforesaid, was the authority under which and by which he effected a sale, as is hereinafter stated.

And this defendant further answering says, that after said written agreement, and prior to said modification thereof, having had an offer of twenty-five hundred dollars from one Goddard for a refusal of said township for a given number of days, at a given price, he consulted with these defendants, who specially authorized him (or a majority of them so did) to give such refusal upon the terms and conditions proposed by said Goddard; and this defendant says that he was thereunto induced, by the consideration of the amount paid for said refusal, and the expectation entertained by him, that said Goddard, or the said Goddard and his friends, would purchase said township.

And this defendant further answering says, that in the month of May, A. D. eighteen hundred thirty-five, he gave to John Williams, then of

the State of New Hampshire, now of the State of New York, an obligation under his own signature to convey to said Williams three-fourths of said township, on payment by the said Williams of the sum of six dollars and fifty cents per acre; said obligation was in writing, and as this defendant thinks was written by Cyrus Goss, of Bangor. It was presented to him by the said Goss on the morning of the day on which it was executed, previous to the departure of the steamboat which left Bangor on the same morning, in which boat the said Williams then left; that he signed said obligation at the request of said Goss, who had previously written the same; that he had had no previous conversation with the said Goss or the said Williams in respect to giving either to the said Goss or the said Williams a refusal of said township, and that in the conversation with the said Williams, on the morning aforesaid, there was not consumed the space of ten minutes; that said Williams was in haste to leave in the steamboat, and that although this defendant objected at the time to the phraseology and to the terms of said refusal, yet there not being time to re-write the same, said refusal was signed by this defendant and delivered to said Williams. And this defendant says, that although said agreement in terms was a stipulation for the conveyance of said township to said Williams at the rate of six dollars and fifty cents per acre, this defendant says that said refusal was in fact upon the terms and conditions that said Williams should have the refusal of said township, for the period of twenty days, for the sum of ninety thousand dollars for three-fourths thereof, which was the proportion of said township embraced in said written refusal. And this defendant believes that said refusal stipulated for the payment of interest from its date.

And this defendant further answering says, that the true intent and understanding between this defendant and the said Williams, in the matter of the said refusal, however the same may have been written, was that said Williams should have the refusal of three-fourths of said township for the period of twenty days, and that at any time within that period, upon the payment by the said Williams to the said Emerson of the sum of ninety thousand dollars, said Williams should have a conveyance of three-fourths of said township, according to the stipulations of said refusal.

And this defendant further answering says, that previous to this refusal given to the said Williams, a Mr. Weeks, who this defendant supposed to be a friend of Mr. Goddard, to whom a previous bond had been given as aforesaid, applied to this defendant to purchase a portion of said township, and was at the time of said refusal upon said township, having the verbal agreement of this defendant that he should have a quarter part thereof, if upon examination he was desirous to have it; which was the reason why this defendant gave to the said Williams a refusal of three-fourths of said township only. Said defendant is unable to find said refusal among his papers, and believes the same has been destroyed.

And this defendant further answering says, that he made his said obligation for the conveyance of said three-fourths of said township with

the said Williams as before stated; that the said Williams, as this defendant is informed and believes, sold one-eighth of said township to this complainant; that this complainant paid the said Williams, in notes and drafts, to the amount stipulated between them for said purchase.

And this defendant says, that he received from the said Williams, in discharge of the said Williams' refusal, certain notes and drafts, including certain notes and drafts of this complainant, to the amount of ninety thousand dollars, with interest from the date of said refusal. And this defendant denies that said Williams was authorized to act, or did act, or assume to act, as the agent of these defendants, in his negotiation with this complainant. On the contrary, this defendant says, that his contract of refusal was with the said Williams; that he received of the said Williams, and not of this complainant, this complainant's draft and notes aforesaid as the property of the said Williams; that he was not present when said draft and notes were executed or delivered to the said Williams, and that this complainant's notes, though payable to this defendant, were not delivered to said Williams as the property of this defendant, but as the property of the said Williams; and were by said Williams delivered to this defendant as the property of the said Williams, and in cancellation of his, the said Williams', obligation to this defendant.

And this defendant admits, that he received from said Williams two promissory notes, signed, as he believes, by John Doggett & Co., for the sum of five thousand nine hundred and sixty-nine dollars sixteen cents each, payable in one and two years; and a draft, drawn by John Williams on John Doggett & Co., at sixty days, for the sum of six thousand thirty-one dollars eighty-four cents. And this defendant denies that the sole object of said refusal was to enable the said Williams to make sale of the said township on account of these defendants.

And this defendant further answering denies, that as agent of these defendants, or personally, that he stated to said Williams that said township contained twenty-two thousand and forty acres, besides the public lots reserved by the State, although he believes said township to contain that number of acres. And this defendant denies that he, distinctly or indistinctly, directly or indirectly, gave the said Williams to understand, that these defendants paid the State for that number of acres, or any number exceeding the actual number paid for; or that there was not deducted two thousand two hundred and fifteen acres covered with water. And this defendant denies, that at the time of executing his said refusal to said Williams, or at any time, he delivered to said Williams any certificate or statement made by persons who had explored and examined the said township; on the contrary, this defendant says, that he made no representations whatsoever respecting the number of acres which were embraced in said township, or of the number of acres covered by water, or of the number of acres embraced in their purchase of the State. And this defendant says, that he delivered neither to said Williams, nor to the said Goss, nor to any person, any certificate containing any estimate of any quantity of timber on said township, or

any certificate that the same had been explored by any person, or make any representations to said Williams respecting said township.

And this defendant further answering says, that he has no knowledge of any representations made by the said Williams to this complainant, or that the said Williams exhibited to this complainant any certificates respecting said township; neither does this defendant know the consideration which induced this complainant to enter into the contract of purchase with the said Williams. And this defendant expressly denies, that he either knew or approved of any acts or doings of the said Williams in the premises; on the contrary, this defendant says, that his said contract or obligation was with the said Williams; that he did not know this complainant in the purchase, otherwise than by receiving of the said Williams this complainant's notes and drafts as aforesaid, as so much money due from the said Williams to these defendants. And this defendant's recollection and belief is, that he knew not of this complainant's said purchase, or that this complainant proposed to make said purchase, until the evening of the expiration of said refusal; and that this defendant, on the succeeding day, notified the land agent of said State, after he had received from the said Williams the consideration expressed in his said refusal, that said agent might convey said three-fourths to whomsoever the said Williams should direct; that the other defendants were not present at the time of said settlement with said Williams, neither was this complainant; that he considered himself as negotiating with the said Williams, and had no occasion to inquire, neither did he inquire, or know the relations which subsisted between the said Williams and this complainant.

And this defendant further answering denies, that he, or any of these defendants, to his knowledge, fraudulently, or otherwise, concealed from this complainant the quantity of land purchased by these defendants from the State, or that the said State, in selling to these defendants, had made any deduction from the quantity of land in consequence of the same being covered by water and having no timber thereon, or that he or they represented to this complainant any given quantity of acres. And this defendant denies that he, or either of these defendants, to his knowledge, knew for what object this complainant made his said purchase; and this defendant has no knowledge when this complainant first discovered any thing respecting the value of said township, and denies that he has ever made any such discoveries as this complainant, in this part of his said bill, has alleged. And this defendant says, that in April last he subscribed a memorial, a copy of which makes part of this complainant's bill, which said memorial was drafted by his attorney, and was intended to contain a true representation of the facts therein set forth; that all therein set forth is not true in respect to this defendant. This defendant was not present when said purchase was made, and received no assurances or representations whatever from the said land agent that the examination of said township, in said memorial mentioned, had reference to the examination made by Benjamin P. Gilman, and others associated with him in his examination, and the

estimate made by Milford P. Norton, esq., had reference to said Norton's written communication to the Governor and council, as is therein stated.

And this defendant further answering says, that at the time of his said purchase of the State, he had not seen the report of said Kelsey; and although he was informed that said Kelsey had made such a report as in said complainant's bill is set forth, the time occupied by said Kelsey in making his said exploration, the manner in which said exploration was made, and the means which said Kelsey possessed of forming an estimate of the quantity or quality of timber on said township, were not known to him, which was all the knowledge this defendant possessed respecting the value of said township. This defendant had been, for several years previous to said purchase, engaged in the lumbering business; he knew the difficulty of obtaining an accurate estimate of the quantity of timber upon a township of land, and the still greater difficulty of ascertaining the quality of that timber. He did not believe that said township had been explored by said Kelsey in such a manner as would enable him to form an accurate estimate of the quantity or quality of the timber thereon, and he would not have purchased said township for the purpose of operating upon the same, without a more thorough examination than he supposed said Kelsey had bestowed, nor without knowing the particular means of judging which any explorer had possessed.

And this defendant further says, that he did not purchase said township principally for the timber supposed to be thereon, nor for the purpose of retaining it, but for the purpose of disposing of the same in the market at that particular period of excitement, and in the then peculiar condition of the market; that, at this distance of time, he is unable to say what quantity of timber he then supposed was on the township, or that he supposed any definite quantity. His remembrance and belief is, that he considered the quantity wholly unsettled; he could have entertained no opinion that there was any particular quantity, upon the information which he then possessed; he supposed that it might considerably exceed or fall short of said Kelsey's estimate; that he neither purchased or sold upon the supposition of any particular quantity; he considered that wholly unsettled, and that it was a risk which he incurred in the first instance, and the complainant in the last; that whatever were the opinions entertained by this complainant, and which induced his purchase, they were unknown to, and not participated by, this defendant.

This defendant further answers and says, that land in the section of the State where this township is situated is chiefly valuable for its timber; that this defendant received from the said Williams, in notes and drafts, the sum of ninety thousand dollars, with interest from the date of said refusal, and no more; that, of this ninety thousand dollars, no part or portion thereof belonged to this defendant. His interest in the purchase from the State was one-fourth, which was not sold to said Williams, or to any other person; that he has no knowledge that this

complainant has made any exploration of said land; that one David Smiley was on said township, in the spring of 1836, examining the timber; and that Benjamin P. Gilman, and his associates, in the fall of eighteen hundred thirty-nine, examined said township for the purpose of locating teams thereon; and that John Turner, for Leonard Jones, was on said township for a few days during the last summer; and that this defendant knows of no other exploration, since the exploration of said Kelsey, for the purpose of ascertaining the quantity of timber on the said township. And this defendant is unable to say what quantity of timber is on said township, what is the quality of the timber, what is the present value of the land without the timber, or what is the value of the timber now on it. This defendant has no knowledge nor information respecting the quantity of timber, or quality of the same, or the present value of the land without the timber, which would lead him to a belief respecting either, upon which a prudent man should act in making a purchase of the same for the purpose of operating, or which would justify this defendant in stating any particular quantity of good merchantable timber. This defendant means to say, that if he were asked how much timber, merchantable or otherwise, was now on said township, he should be obliged to answer hypothetically—that if the representations of this man were to be relied on as accurate, there would be one quantity; that if the representations of another, there would be another quantity, and so on; that this defendant has no knowledge of any such exploration or examination of said township as would satisfy him, or justify him in expressing an opinion which might or could properly be expressed or called by the term belief. This defendant has been informed that there are large bodies of timber on said township, and the quality of it has been variously represented to him by various individuals. He has no knowledge or belief that any timber has been taken off since the sale to this complainant; and that if said township contained three millions of good pine timber, its value would depend upon the situation of said timber, and a variety of other circumstances. Stumpage in that section of the State commands four or five dollars per thousand.

And this defendant further answering says, that after said first payment to the State, the said Farrar paid to the State a certain sum, the amount of which is not recollected by this defendant, which was endorsed on these defendants' notes. And this defendant is informed, and believes, that the amount awarded by said commissioners has been endorsed on the notes of this defendant, the precise amount of which, in dollars and cents, this defendant does not recollect; he believes it to have been twenty-six fortieths according to the report of said commissioners. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing, in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, according

to the knowledge or belief of this defendant. All which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WM. EMERSON.

STATE OF MAINE, *Penobscot, ss:*

December 22d, 1841.

Subscribed and sworn to, before me, on this twenty-second day of December, A. D. eighteen hundred and forty-one.

THORNTON McGAW,
Justice of the Peace.

The several answer of Amos M. Roberts.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereto, he answers and says, that he admits that the defendants in the complainants' bill named, on or about the twenty-first day of February, A. D. eighteen hundred thirty-five, bargained for, and purchased of, the State of Maine, a township of land numbered three, in the thirteenth range west from the east line of the State, and that said township contained, exclusive of land covered by water, and the public lots reserved by the State, nineteen thousand eight hundred and twenty-five acres; that they agreed to pay therefor the sum of sixty-four thousand four hundred and twenty-one dollars twenty-four cents, one-third part of which they paid in money at the time of said purchase, and, for the remainder of said sum, they gave their joint notes, payable in one, two, and three years from that date, and took from said State an agreement to convey said township to the defendants on demand.

This defendant further answering says, that he was interested, in manner aforesaid, in one-fourth part of said township, but he denies that said joint notes remained unpaid at the time of filing of said bill of complaint. On the contrary, he says that said joint notes were cancelled and paid by substitution of notes of the said Emerson, secured by his mortgage.

And this defendant further answering says, that said Emerson was authorized by these defendants to dispose of their interest in said township by virtue of a certain instrument in writing, the original copy of which is hereunto annexed and marked A, and the contents of which this defendant makes a part of his answer. And that afterwards said authority was so modified, verbally, as this defendant believes, as to authorize the said Emerson to dispose of their interest in said township for a sum not less than one hundred and twenty thousand dollars, one-third thereof to be paid in cash at the time of sale, and the residue thereof in

one and two years from said time of sale; but this defendant denies that said Emerson was authorized to sell any undivided portion of their interest in said township, or that said Emerson was authorized by this defendant to give a bond of the same. On the contrary, this defendant says, that his design in conferring said authority on said Emerson was, that all the interest of all these defendants in said township might be sold at one and the same time, and in the same manner, so as to exclude the introduction of any other tenant in common; and that it was understood and agreed that said township should not be exposed for sale in the manner then usual and customary among speculators in timber lands, but that the said Emerson, upon application of a bona fide purchaser, should dispose of the same; but this defendant admits that said Emerson, at a time prior to the sale to this complainant, as the agent of these defendants, did give to one Goddard a bond of said township; but this defendant says that said Emerson was specially authorized by these defendants to give said bond; that they received from said Goddard therefor the sum of twenty-five hundred dollars, and that the consideration paid therefor, and the belief entertained by these defendants that said township would be purchased by the said Goddard, or by the said Goddard and his friends, was the inducement for conferring said special authority upon said Emerson.

And this defendant further answering says, that he has been informed and believes, although he has never seen the same, that the said Emerson, in the month of May, A. D. eighteen hundred and thirty-five, did give to one John Williams, then of the State of New Hampshire, but now of the State of New York, a certain bond, or obligation, to convey to said Williams three undivided fourth parts of said township, on payment of six dollars and fifty cents per acre; but this defendant denies that said Emerson had any precedent authority to bind him by any such contract, or that this defendant knew that said Williams had disposed of any portion of said township to this complainant, until said bond or obligation had expired, nor until this complainant had executed his contract to purchase.

And this defendant further answering says, that he has been informed and believes, that the agreement between said Emerson and said Williams, however the same might have been otherwise expressed, was, that the said Williams, or the said Williams and his assigns, should have said three-fourths of said township for the sum of ninety thousand dollars, or at the rate of one hundred and twenty thousand dollars for the whole township; that said agreement was not predicated upon a price per acre, but upon a gross sum; and that said Emerson did, in fact, receive from the said Williams the said sum of ninety thousand dollars only.

This defendant says, that he received from the sale of said township, for his interest therein, at the rate of ninety thousand dollars for said three-fourths, and no more; and this defendant denies that the sole object of said obligation was to enable the said Williams to make sale of said land on account of said Emerson and his associates.

And this defendant further answering says, that he has no knowledge that the said Emerson, at any time, made any representations respecting the number of acres embraced in said township, or the number of acres which the said Emerson and his associates purchased of the State; but this defendant has been informed and believes, that said Emerson made no such statements, nor gave the said Williams to understand any such things as in this part of said complainant's bill are alleged. This defendant says that said Emerson was not authorized by these defendants to make any such representations.

And this defendant further answering says, that said Emerson did not, to his knowledge, at the time of executing his said obligation to said Williams, nor at any other time, deliver to said Williams, for the purpose of enabling him to sell said land, or for any other purpose. certificates or statements made by persons who had explored and examined the said township, with the view of ascertaining the quantity of timber thereon; on the contrary, this defendant has been informed and believes, that said Emerson did not deliver any certificates or statements. And this defendant says, that if said Emerson did, he was not authorized so to do, and that in so doing he violated the express understanding between himself and these defendants.

This defendant further answering says, that he was not present at the negotiation of purchase between the said Williams and this complainant, and had no other knowledge of the same than as before stated; that, of the representations made by the said Williams to this complainant, and of the inducements which led this complainant to enter into this contract of purchase, this defendant has no knowledge, nor any information or belief, which he has not derived from said Williams or this complainant since the completion of said purchase. And this defendant denies that said Williams, on said eighth day of June, or at any prior time, informed this defendant of his, the said Williams', treaty and negotiation with this complainant, or that this complainant had concluded to purchase, or had purchased, any portion of said township. And this defendant denies that, on said eighth day of June, or at any prior time, he approved of the acts or doings of the said Williams in the premises, or that he obtained from the land agent of the State of Maine a deed of the said eighth part of said township, as said complainant has in his said bill alleged; on the contrary, this defendant saith, that prior to the execution of the deed from the State to this complainant, he had no knowledge that this complainant had purchased, or was negotiating with any one for a purchase of any portion of said township, nor that said Williams had in his possession any certificate or statement respecting said township signed by any person, or that the said Williams had made any representations respecting the quantity and quality of timber on said township, or had made any representations of the purchase made by these defendants of the State. And this defendant is informed and believes, that said Williams did not assume to act as the agent of these defendants in his negotiation with this complainant, or that he made to this complainant, as the agent of these defendants, any repre-

sentations whatsoever; and that this complainant, in his said negotiation with said Williams, did not consider the said Williams as acting as agent for these defendants, or any other person.

And this defendant further answering says, that these defendants did not, to his knowledge, conceal from this complainant the quantity of land purchased by them of the State, or the amount deducted on account of a portion of said township being covered by water, and having no timber thereon. And this defendant has been informed and believes, that this complainant did execute and deliver to said Williams his several notes and drafts, as in his said bill set forth; but whether the said Williams delivered the same to the said Emerson he has no knowledge, but has been informed and believes that a part of them were so delivered; but whether the same have been paid he is not informed. And this defendant denies that it was known to him, or to either of these defendants to his knowledge, that the complainant purchased said eighth of said township solely for the timber represented to be thereon. And this defendant has no knowledge when this complainant first discovered that said tract of land did not contain the quantity of merchantable timber represented by said Williams, or by any explorers, to be thereon; but this defendant denies that there ever has been a thorough examination of said township made since said purchase, or that it has been ascertained, either before or since said purchase, that there is little or no merchantable timber on said tract, or that said land is almost worthless, or that this defendant, in the sale of said township, acted under a mistake in regard to the quantity and quality of timber on said township, or that this defendant misrepresented to, or deceived this complainant as to the quantity or quality of the timber thereon.

And this defendant further answering says, that prior to his said purchase of the State, he had been informed that one Joseph L. Kelsey, by the direction of the honorable Daniel Rose, the land agent of Maine, in the year eighteen hundred thirty-one, made an exploration of said township, and, in his report of said exploration to said agent, said township was estimated to contain eighteen millions of feet of merchantable pine timber of the first quality; that the time occupied by said Kelsey in making his said exploration, the manner in which said exploration was made, and the means which said Kelsey possessed of forming a correct estimate of the quantity or quality of the timber on said township, were not known to this defendant. The land agent represented to this defendant that said township had been explored by said Kelsey, and that he had no doubt that it contained a much larger quantity of timber than was reported by said Kelsey. The report of said Kelsey was not seen by these defendants, and the said land agent did not pretend that he had any knowledge of the accuracy of said Kelsey's report; and this is all the knowledge that this defendant possessed of the value of said township at the time of his said purchase. This defendant had been, for several years previous to said purchase, engaged in the lumbering business; he knew the difficulty of obtaining an accurate estimate of the quantity of timber upon a township of land, and the still greater diffi-

culty of ascertaining the quality of that timber. He did not believe that said township had been explored by said Kelsey in such a manner as would enable him to form an accurate estimate of the quantity or quality of the timber thereon; and he would not have purchased said township for the purpose of operating upon the same, without a more thorough examination than he supposed said Kelsey had bestowed, nor without knowing the particular means of judging which any explorer had possessed.

And this defendant further says, that he did not purchase said township principally for the timber supposed to be thereon, nor for the purpose of retaining it, but for the purpose of disposing of the same in the market at that particular period of excitement, and in the then peculiar condition of the market; that at this distance of time he is unable to say what quantity of timber he then supposed was on the township, or that he supposed any definite quantity. His remembrance and belief is, that he considered the quantity wholly unsettled; he could have entertained no opinion that there was any particular quantity upon the information which he then possessed. He supposed that it might considerably exceed or fall short of said Kelsey's estimate; that he neither purchased nor sold upon the supposition of any particular quantity. He considered that wholly unsettled, and that it was a risk which he incurred in the first instance, and the complainant in the second; that whatever were the opinions entertained by this complainant, and which induced his purchase, they were unknown to, and not participated by, this defendant.

This defendant further answers and says, that land in the section of the State where this township is situated, is chiefly valuable for its timber; that he has no knowledge of whom the complainant did purchase; that he has been informed and believes, that this complainant purchased of said Williams. That this defendant received his proportion for his interest in said sale from the said Emerson, and that he paid said Emerson the sum of two thousand one hundred and forty dollars ninety-six cents, being the excess of notes and drafts which he received from said Emerson on account of his said interest. That he has no knowledge that this complainant has made any exploration of said land. That one David Smiley was on said township in the spring of eighteen hundred thirty-six, examining the timber, and that Benjamin P. Gilman, in the fall of eighteen hundred thirty-nine, examined said township for the purpose of locating teams thereon, and that John Turner was on said township for a few days during the last summer, and that this defendant knows of no other exploration, since the exploration of said Kelsey, for the purpose of ascertaining the quantity of timber on said township; and this defendant is unable to say, what quantity of timber is on said township, what is the quality of the timber, what is the present value of the land without the timber, or what is the value of the timber now on it. This defendant has no knowledge or information respecting the quantity of timber, or quality of the same, or the present value of the land without the timber, which would lead him to

a belief respecting either upon which a prudent man should act in making a purchase of the same, or which would justify this defendant in stating any particular quantity of good merchantable timber. This defendant means to say, that if he were asked how much timber, merchantable or otherwise, was now on said township, he should be obliged to answer hypothetically, that if the representations of this man were to be relied upon as accurate, there would be one quantity; that if the representations of another, there would be another quantity, and so on; that this defendant has no knowledge of any such exploration or examination of said township, as would satisfy him or justify him in expressing an opinion which might or could properly be expressed or called by the term belief. This defendant has been informed, that there are large bodies of timber on said township, and the quality of it has been variably represented to him by various individuals. He has no knowledge or belief that any timber has been taken off since the sale to this complainant, and that if said township contained three millions of good pine timber, its value would depend upon the situation of said timber, and a variety of other circumstances. Stumpage in that section of the State commands four or five dollars per thousand.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. M. ROBERTS.

STATE OF MAINE, *Penobscot, ss:*

Subscribed and sworn to on this twenty-second day of December, A. D. eighteen hundred and forty-one, before me,

THORNTON McGAW,
Justice of the peace.

A.

Whereas we, William Emerson, Isaac Farrar, Amos M. Roberts, and Norcross and Mason, all of Bangor, gentlemen, have this day purchased of John Hodgdon, land agent of the State of Maine, township number three, in the thirteenth range, west from the east line of the State, and have in addition to the cash payment given our notes to Asa Redington, jr., treasurer of Maine, for forty-two thousand nine hundred and fifty-four dollars and seventeen cents, in three notes for fourteen thousand three hundred and eighteen dollars and six cents each; payable in one, two, and three years from date, and interest annually; said

township being purchased in equal shares, and our several abilities on said notes being equal.

Now, therefore, we agree and determine to put said township into the hands of William Emerson, and authorize him to take a deed of the same on the following terms, and for the following purposes, to wit: To sell for the sum of one hundred thousand dollars for the benefit of the parties above named, and to pay out of the proceeds of said town the three notes above described, as of this date, and to pay over the balance in equal proportions on demand to the said Emerson, Roberts, Farran, and Norcross and Mason. And the said Emerson hereby agrees, in consideration of the premises, to take the charge of said town, to sell it if opportunity should present for the purposes aforesaid, and, if sold, to pay the notes as aforesaid, and to pay over the balance in manner above described to the parties above mentioned. And it is mutually agreed, that a majority of the above named parties shall control the direction of said township, and make other regulations as they may at any time deem proper, whether in price or terms of payment, the present being considered cash in hand: Provided, however, that nothing herein contained shall restrict said Emerson from selling said town at a higher sum than one hundred thousand dollars.

In witness whereof, we have hereunto subscribed our names, this twenty-first day of February, 1835.

WILLIAM EMERSON,
A. M. ROBERTS,
ISAAC FARRAN,
NORCROSS & MASON.

The several answer of Isaac Farran.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer, he answered and says, that he admits that the defendants in the complainant's bill named, on or about the twenty-first day of February, A. D. eighteen hundred thirty-five, bargained for and purchased of the State of Maine a township of land, numbered three, in the thirteenth range of townships west from the east line of the State, and that said township contained, exclusive of land covered by water, and the public lots reserved by the State, nineteen thousand eight hundred and twenty-five acres; that they agreed to pay therefor the sum of sixty-four thousand four hundred and twenty-one dollars and twenty-four cents; one-third part of which they paid in money at the time of said purchase, and for the remainder of said sum they gave their joint notes, payable in one, two, and three years from that date, and took from said State an agreement to convey said township to the defendants, a true copy of which is hereunto annexed, and marked A, which this defendant makes a part of his answer.

This defendant further answering says, that he was interested in manner aforesaid in one-fourth part of said township, but he denies that said joint notes remained unpaid at the time of filing said bill of complaint. On the contrary, he says that said joint notes were cancelled and paid by substitution of notes of the said Emerson, secured by his mortgage.

And this defendant further answering says, he admits that the said Emerson, shortly after said purchase, was authorized by these defendants to dispose of their interest in said township for the sum of one hundred thousand dollars in cash; and that afterwards said authority was so modified as to authorize the said Emerson to dispose of their interest in said township for a sum not less than one hundred and twenty thousand dollars; one-third thereof to be paid in cash at the time of sale, and the residue thereof in one and two years from said time of sale; but this defendant denies that said Emerson was authorized to sell any undivided portion of their interest in said township, or that the said Emerson was authorized by this defendant to give a bond of the same. On the contrary, this defendant says, that his design in conferring said authority on said Emerson was, that all the interest of all these defendants in said township might be sold at one and the same time, and in the same manner so as to exclude the introduction of any other tenant in common. And that it was understood and agreed, that said township should not be exposed for sale in the manner then usual and customary among speculators in timber lands; but that the said Emerson, upon application of a bona fide purchaser, should dispose of the same; but this defendant admits, that said Emerson at a time prior to the sale to this complainant, as the agent of these defendants, did give to one Goddard a bond of said township; but this defendant says, that said Emerson was specially authorized by these defendants to give said bond, that they received from said Goddard therefor the sum of twenty-five hundred dollars. And that the consideration paid therefor, and the belief entertained by these defendants, that said township would be purchased by said Goddard, or by the said Goddard and his friends, was the inducement for conferring said special authority upon said Emerson.

And this defendant further answering says, that he has been informed and believes, although he has never seen the same, that the said Emerson, in the month of May, A. D. eighteen hundred thirty-five, did give to one John Williams, then of the State of New Hampshire, but now of the State of New York, a certain bond or obligation, to convey to said Williams three undivided fourth parts of said township on payment of six dollars and fifty cents per acre; but this defendant denies that said Emerson had any precedent authority to bind him by any such contract, or that this defendant knew to whom said Williams had disposed of said township, or that said Williams had disposed thereof, or of any portion of the same, until said bond or obligation had expired, nor until this complainant had executed his contract to purchase, and received his deed from the State.

And this defendant further answering says, that he has been informed and believes, that the agreement between said Emerson and said Williams, however the same might have been otherwise expressed, was, that the said Williams, or the said Williams and his assigns, should have said three-fourths of said township for the sum of ninety thousand dollars, or at the rate of one hundred and twenty thousand dollars for the whole township. That said agreement was not predicated upon a price per acre, but upon a gross sum, and that the said Emerson did, in fact, receive from the said Williams the said sum of ninety thousand dollars only. This defendent says, that he received from the sale of said township, for his interest therein, at the rate of ninety thousand dollars for said three-fourths, and no more; and this defendant denies that the sole object of said obligation was to enable the said Williams to make sale of said land on account of said Emerson and his associates.

And this defendant further answering says, that he has no knowledge that the said Emerson, at any time, made any representations respecting the number of acres embraced in said township, or the number of acres which the said Emerson and his associates purchased of the State; but this defendant has been informed and believes, that said Emerson made no such statements, nor gave the said Williams to understand any such things as in this part of said complainants' bill are alleged. This defendant says that said Emerson was not authorized by these defendants to make any such representations.

And this defendant further answering says, that said Emerson did not, to his knowledge, at the time of executing his said obligation to said Williams, nor at any other time, deliver to said Williams, for the purpose of enabling him to sell said land, or for any other purpose, certificates or statements made by persons who had explored and examined the said township with the view of ascertaining the quantity of timber thereon; on the contrary, this defendant has been informed and believes, that said Emerson did not deliver any certificates or statements. And this defendant says, that if said Emerson did, he was not authorized so to do, and that in so doing he violated the express understanding between himself and these defendants.

This defendant further answering says, that he was not present at the negotiation of purchase between the said Williams and this complainant, and had no other knowledge of the same than as before stated; that of the representations made by the said Williams to this complainant, and of the inducements which led this complainant to enter into the contract of purchase, this defendant has no knowledge, nor any information or belief, which he has not derived from said Williams or this complainant, since the completion of said purchase. And this defendant denies that said Williams, on said eighth day of June, or at any prior time, informed this defendant of his, the said Williams', treaty and negotiation with this complainant, or that this complainant had concluded to purchase, or had purchased, any portion of said township. And this defendant denies that, on the said eighth day of June, or at any prior time, he approved of the acts or doings of the said Williams

in the premises, or that he obtained from the land agent of the State of Maine a deed of the said eighth part of said township, as said complainant has in his said bill alleged; on the contrary, this defendant saith, that prior to the execution of the deed from the State to this complainant, he had no knowledge that this complainant had purchased, or was negotiating with any one for a purchase of any portion of said township, nor that said Williams had in his possession any certificate or statement respecting said township signed by any person, or that the said Williams had made any representations respecting the quantity and quality of timber on said township, or had made any representations of the purchase made by these defendants of the State. And this defendant is informed and believes, that said Williams did not assume to act as the agent of these defendants in his negotiation with this complainant, or that he made to this complainant, as the agent of these defendants, any representations whatsoever; and that this complainant, in his said negotiation with said Williams, did not consider the said Williams as acting as agent for these defendants, or any other person.

And this defendant further answering says, that these defendants did not, to his knowledge, conceal from this complainant the quantity of land purchased by them of the State, or the amount deducted on account of a portion of said township being covered by water, and having no timber thereon. And this defendant has been informed and believes, that this complainant did execute and deliver to said Williams his several notes and drafts as in his said bill set forth, but whether the said Williams delivered the same to the said Emerson he has no knowledge, but has been informed and believes, that a part of them were so delivered, but whether the same have been paid he is not informed. And this defendant denies that it was known to him, or to either of these defendants to his knowledge, that this complainant purchased said eighth of said township solely for the timber represented to be thereon. And this defendant has no knowledge when this complainant first discovered that said tract of land did not contain the quantity of merchantable timber represented by said Williams, or by any explorers, to be thereon; but this defendant denies that there has ever been a thorough examination of said township made since said purchase, or that it has been ascertained, either before or since said purchase, that there is but little or no merchantable timber on said tract, or that said land is almost worthless, or that this defendant, in the sale of said township, acted under a mistake in regard to the quantity and quality of timber on said township, or that this defendant misrepresented to or deceived this complainant, as to the quantity or quality of the timber thereon.

And this defendant further answering says, that prior to his said purchase of the State, he had been informed that one Joseph L. Kelsey, by the direction of the honorable Daniel Rose, then land agent of Maine, in the year 1831 made an exploration of said township; and, in his report of said exploration to said agent, said township was estimated to contain eighteen millions of feet of merchantable pine timber of the first quality; that the time occupied by said Kelsey in making his said

exploration, the manner in which said exploration was made, and the means which said Kelsey possessed of forming a correct estimate of the quantity or quality of the timber on said township, were not known to this defendant. There were certain representations made by the land agent of the probable accuracy of said Kelsey's estimate, and this defendant had previously some knowledge of the character of estimates of explorers of that period. Said agent stated, according to the best of this defendant's recollection, that the estimates of that period generally fell short of the quantity; which was all the knowledge that this defendant possessed of the value of said township at the time of his said purchase. This defendant had been, for several years previous to said purchase, engaged in the lumbering business, although not upon the waters of the Penobscot river. He knew the difficulty of obtaining an accurate estimate of the quantity of timber upon a township of land, and the still greater difficulty of ascertaining the quality of that timber. He did not believe that said township had been explored by said Kelsey in such a manner as would enable him to form an accurate estimate of the quantity or quality of the timber thereon, and he would not have purchased said township for the purpose of operating upon the same, without a more thorough examination than he supposed said Kelsey had bestowed, nor without knowing the particular means of judging which any explorer had possessed.

And this defendant further says, that he did not purchase said township principally for the timber supposed to be thereon, nor for the purpose of retaining it, but for the purpose of disposing of the same in the market at that particular period of excitement, and in the then peculiar condition of the market; that at this distance of time he is unable to state what quantity of timber he then supposed was on the township, or that he supposed any definite quantity. His remembrance and belief is, that he considered the quantity wholly unsettled; he could have entertained no opinion that there was any particular quantity, upon the information which he then possessed. He supposed that it might considerably exceed or fall short of said Kelsey's estimate; that he neither purchased nor sold upon the supposition of any particular quantity; he considered that wholly unsettled, and that it was a risk which he incurred in the first instance and the complainant in the second; that whatever were the opinions entertained by this complainant, and which induced his purchase, they were unknown to and not participated by this defendant.

This defendant further answers and says, that land in the section of the State where this township is situated is chiefly valuable for its timber; that he has no knowledge of whom the complainant did purchase; that he has been informed, and believes, that this complainant purchased of the said Williams; that he has no knowledge that this complainant has made any exploration of said land; that one David Smiley was on said township two or three days in the spring of 1836, examining the timber, and that Benjamin P. Gilman, in the fall of 1839, examined said township for the purpose of locating teams thereon; that

there has been no exploration, to this defendant's knowledge, since the exploration of said Kelsey, for the purpose of ascertaining the quantity of timber thereon; and this defendant is unable to say what quantity of timber is on said township, what is the quality of the timber, what is the present value of the land without the timber, or what is the value of the timber now on it. This defendant has no knowledge or information respecting the quantity of timber, or quality of the same, or the present value of the land with or without the timber, which would lead him to a belief respecting either, upon which a prudent man should act in making a purchase of the same, or which would justify this defendant in stating any particular quantity of good merchantable timber. This defendant means to say, that if he were asked how much timber, merchantable or otherwise, was now on said township, he should be obliged to answer hypothetically, that if the representations of this man were to be relied upon as accurate, there would be one quantity; that if the representations of another, there would be another quantity, and so on; that this defendant has no knowledge of any such exploration or examination of said township as would satisfy him or justify him in expressing an opinion which might or could properly be expressed by the term belief. This defendant has been informed that there are large bodies of timber on said township, and the quality of it has been variously represented to him by various individuals. He has no knowledge or belief that any timber has been taken off since the sale to this complainant; and, if said township contained three millions of good pine timber, its value would depend upon the situation of said timber, and a variety of other circumstances. Stumpage in that section of the State commands four or five dollars per thousand.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing, in the said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

ISAAC FARRAR.

STATE OF MAINE, *Penobscot, ss:*

Subscribed and sworn to, on this 22d day of December, A. D. 1841.
Before me, THORNTON McGAW,
Justice of the Peace.

A.

LAND OFFICE, BANGOR, *February* 21, 1835.

Received of William Emerson, Amos M. Roberts, Isaac Farrar, and Norcross and Mason, sixty-four thousand four hundred and thirty-one

dollars and twenty-five cents, in payment for township number three, in the thirteenth range west from the east line of the State, and hereby agree to deed the same to them whenever they shall call upon me for that purpose at the land office. The reason why a deed is not given at this time is, that the records of deeds is now at Augusta.

(Signed) JOHN HODGDON,
Land agent of Maine.

The several answer of Nicholas G. Norcross.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer, he answers and says: That he admits that the defendants in this complainant's bill named, on or about the twenty-first day of February, A. D. 1835, bargained for and purchased of the State of Maine a township of land, numbered three, in the thirteenth range of townships west from the east line of the State, and that said township contained, exclusive of land covered by water, and the public lots reserved by the State, nineteen thousand eight hundred and twenty-five acres; that they agreed to pay therefor the sum of sixty-four thousand four hundred and twenty-one dollars and twenty-four cents; one-third part of which they paid in money or short drafts, at the time of said purchase, and for the remainder of said sum they gave their joint notes, payable in one, two, and three years from that date, and took from said State an agreement to convey said townships to the defendants; a true copy of which is hereunto annexed, and marked A, which this defendant makes a part of his answer.

This defendant further answering says, that, at the time of said purchase, he was a copartner in trade with Joseph W. Mason, also one of the defendants in said bill, doing business jointly with said Mason, under the firm of Norcross & Mason, and that he and the said Mason together were jointly interested in one quarter part of said purchase in manner aforesaid; but he denies that said joint notes remained unpaid at the time of filing of said bill of complaint. On the contrary, he says that said joint notes were cancelled and paid by substitution of notes of the said Emerson, secured by his mortgage.

And this defendant further answering says, he admits that the said Emerson, shortly after said purchase, was authorized by these defendants to dispose of their interest in said township for the sum of one hundred thousand dollars in cash; and that afterwards said authority was so modified as to authorize the said Emerson to dispose of their interest in said township for a sum not less than one hundred and twenty thousand dollars, one-third thereof to be paid in cash at the time of sale, and the residue thereof in one and two years from said time of sale; but this defendant denies that said Emerson was authorized to sell any undivided portion of their interest in said township, or that the said Emerson was authorized by this defendant to give a bond of the same.

On the contrary, this defendant says, that his design in conferring said authority on said Emerson was, that all the interest of all these defendants in said township might be sold at one and the same time, and in the same manner, so as to exclude the introduction of any other tenant in common. And that it was understood and agreed that said township should not be exposed for sale in the manner then usual and customary among speculators in timber lands, but that the said Emerson, upon application of a bona fide purchaser, should dispose of the same; but this defendant admits that said Emerson, at a time prior to the sale to this complainant as the agent of these defendants, did give to one Goddard a bond of said township, but this defendant says that said Emerson was specially authorized by these defendants to give said bond; that they received from said Goddard therefor the sum of twenty-five hundred dollars; and that the consideration paid therefor, and the belief entertained by these defendants that said township would be purchased by said Goddard, or by the said Goddard and his associates, was the inducement for conferring said special authority upon said Emerson.

And this defendant further answering says, that he had no knowledge or information that a bond or obligation to convey any part of said township to said Williams had been given by said Emerson, until after the time when said complainant, as he alleges in his said bill, had made and completed his said purchase; that he has since been informed, although he has never seen the same, that said Emerson, in the month of May, A. D. 1835, did give to one John Williams, then of the State of New Hampshire, but now of the State of New York, a certain bond or obligation to convey to said Williams three undivided fourth partsof said township, on payment of six dollars and fifty cents per acre; but this defendant denies that said Emerson had any precedent authority to bind him by any such contract, or that this defendant knew to whom the said Williams had disposed of said township, or that the said Williams had disposed thereof, or of any portion thereof, until said bond or obligation had expired, nor until this complainant had executed his contract to purchase, and received his deed from the State.

And this defendant further answering says, that he has been informed and believes, that the agreement between said Emerson and said Williams, however the same might have been otherwise expressed, was that the said Williams should have said three-fourths of said township for the sum of ninety thousand dollars, or at the rate of one hundred and twenty thousand dollars for the whole township; that said agreement was not predicated upon a price per acre, but upon a gross sum; and that the said Emerson did, in fact, receive from the said Williams the said sum of ninety thousand dollars only. This defendant says, that he received from the sale of said township, for his interest therein, or for the interest of said firm of Norcross & Mason therein, at the rate of ninety thousand dollars for said three-fourths, and no more; and that he received of said Emerson the said Norcross & Mason's proportional share of the proceeds of said sale in the individual notes and obligations of the said Emerson; and this defendant denies

that the sole object of said obligation was to enable the said Williams to make sale of said land on account of said Emerson and his said associates.

And this defendant further answering, says that he has no knowledge that the said Emerson, at any time, made any representation respecting the number of acres embraced in said township, or the number of acres which the said Emerson and his associates purchased of the State; but this defendant has been informed and believes, that said Emerson made no such statements, nor gave the said Williams to understand any such things as in this part of said complainant's bill are alleged. This defendant says that said Emerson was not authorized by these defendants to make any such representations.

And this defendant further answering says, that said Emerson did not, to his knowledge, at the time of executing his said obligation to said Williams, nor at any other time, deliver to said Williams, for the purpose of enabling him to sell said land, or for any other purpose, certificates or statements made by persons who had explored and examined the said township with the view of ascertaining the quantity of timber thereon; on the contrary, this defendant has been informed and believes, that said Emerson did not deliver any certificate or statements. And this defendant says, that if said Emerson did, he was not authorized so to do; and that, in so doing, he violated the express understanding between himself and these defendants.

This defendant further answering says, that he was not present at the negotiation of purchase between the said Williams and this complainant, and had no other knowledge of the same than as before stated; that, of the representations made by the said Williams to this complainant, and of the inducements which led this complainant to enter into this contract of purchase, this defendant has no knowledge, nor any information or belief which he has not derived from said Williams or this complainant since the completion of said purchase. And this defendant denies that said Williams, on said eighth day of June, or at any prior time, informed this defendant of his the said Williams's treaty and negotiation with this complainant, or that this complainant had concluded to purchase, or had purchased, any portion of said township; and this defendant denies that on the said eighth day of June, or at any prior time, he approved of the acts or doings of the said Williams in the premises, or that he obtained from the land agent of the State of Maine a deed of the said eighth part of said township, as said complainant has in his said bill alleged. On the contrary, this defendant saith, that prior to the execution of the deed from the State to this complainant, he had no knowledge that this complainant had purchased, or was negotiating with any one for a purchase of, any portion of said township; nor that said Williams had in his possession any certificate or statement respecting said township signed by any person, or that the said Williams had made any representations respecting the quantity and quality of timber on said township, or had made any representations of the purchase made by these defendants of the State. And this defen-

dant is informed and believes, that said Williams did not assume to act as the agent of these defendants in his negotiation with this complainant, or that he made to this complainant, as the agent of the defendants, any representations whatever; and that this complainant, in his said negotiation with said Williams, did not consider the said Williams as acting as agent for these defendants, or any other person.

And this defendant further answering says, that these defendants did not, to his knowledge, conceal from this complainant the quantity of land purchased by them of the State, or the amount deducted on account of a portion of said township being covered by water, and having no timber thereon. And this defendant has been informed and believes, that this complainant did execute and deliver to said Williams his several notes and drafts, as in his said bill set forth; but whether the said Williams delivered the same to the said Emerson, he has no knowledge, but has been informed and believes, that a part of them were so delivered; but whether the same have been paid, he is not informed; and this defendant denies that it was known to him, or to either of these defendants to his knowledge, that this complainant purchased said eighth of said township solely for the timber represented to be thereon. And this defendant has no knowledge when this complainant first discovered that said tract of land did not contain the quantity of merchantable timber represented by said Williams, or by any explorers, to be thereon; but this defendant denies that there ever has been a thorough examination of said township made since said purchase; or that it has been ascertained, either before or since said purchase, that there is but little or no merchantable timber on said tract; or that said land is almost worthless; or that this defendant, in the sale of said township, acted under a mistake in regard to the quantity and quality of timber on said township; or that this defendant misrepresented to, or deceived, this complainant as to the quantity or quality of the timber thereon.

And this defendant further answering says, that prior to his said purchase of the State, he had been informed that one Joseph L. Kelsey, by the direction of the hon. Daniel Rose, then land agent of Maine, in the year 1831, made an exploration of said township, and, in his report of said exploration to said agent, said township was estimated to contain eighteen millions of feet of merchantable pine timber of the first quality; that the time occupied by said Kelsey in making his said exploration, the manner in which said exploration was made, and the means which said Kelsey possessed of forming a correct estimate of the quantity or quality of the timber on said township, were not known to this defendant. There were certain representations made by the land agent of the probable accuracy of said Kelsey's estimate, and this defendant had previously some knowledge of the character of estimates of explorers of that period. This defendant had been, for several years previous to said purchase, engaged in the lumbering business upon the waters of the Penobscot river; he knew the difficulty of obtaining an accurate estimate of the quantity of timber upon a township of land, and the still greater difficulty of ascertaining the quality of that timber.

He did not believe that said township had been explored by said Kelsey in such a manner as would enable him to form an accurate estimate of the quantity or quality of the timber thereon; and he would not have purchased said township for the purpose of operating upon the same without a more thorough examination than he supposed said Kelsey had bestowed, nor without knowing the particular means of judging which any explorer had possessed.

And this defendant says further, that he did not purchase said township principally for the timber supposed to be thereon, nor for the purpose of retaining it, but for the purpose of disposing of the same in the market at that particular period of excitement, and the then peculiar condition of the market; that at this distance of time he is unable to state what quantity of timber he then supposed was on the township, or that he supposed any definite quantity. His remembrance and belief is, that he considered the quantity wholly unsettled; he could have entertained no opinion that there was any particular quantity upon the information which he then possessed. He supposed it might considerably exceed or fall short of said Kelsey's estimate; that he neither purchased nor sold upon the supposition of any particular quantity. He considered that wholly unsettled, and that it was a risk which he incurred in the first instance, and the complainant in the second; that whatever were the opinions entertained by this complainant, and which induced his purchase, they were unknown to, and not participated by, this defendant.

This defendant further answers and says, that land in the section of the State where this township is situated is chiefly valuable for its timber; that he has no knowledge of whom the complainant did purchase; that he has been informed and believes that this complainant purchased of the said Williams; that he has no knowledge that this complainant has made any exploration of said land, nor does he know of any other exploration, since the exploration of said Kelsey, made for the purpose of ascertaining the quantity of timber thereon; and this defendant is unable to say what quantity of timber is on said township, what is the quality of the timber, what is the present value of the land without the timber, or what is the value of the timber now on it. This defendant has no knowledge or information respecting the quantity of timber, or quality of the same, or the present value of the land with or without the timber, which would lead him to a belief respecting either, upon which a prudent man should act in making a purchase of the same, or which would justify this defendant in stating any particular quantity of good merchantable timber. This defendant means to say, that if he were asked how much timber, merchantable or otherwise, was now on said township, he should be obliged to answer hypothetically, that, if the representations of this man were to be relied upon as correct, there would be one quantity; that if the representations of another, there would be another quantity; and so on. That this defendant has no knowledge of any such exploration or examination of said township as would satisfy him or justify him in expressing an opinion which might

or could properly be expressed by the term belief. This defendant has been informed that there are large bodies of timber on said township, and the quality of it has been variously represented to him by various individuals. He has no knowledge or belief that any timber has been taken off since the sale to this complainant; and that if said township contained three millions of good pine timber, its value would depend upon the situation of said timber, and a variety of other circumstances. Stumpage, in that section of the State commands about four dollars per thousand. And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing, in the said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

N. G. NORCROSS.

STATE OF MAINE, *Penobscot, ss:*

Subscribed and sworn to on this twenty-second day of December, A. D. 1841, before me,

THORNTON McGAW,
Justice of the Peace.

A.

LAND OFFICE,
Bangor, February 21, 1835.

Received of William Emerson, Amos M. Roberts, Isaac Farrar, and Norcross and Mason, sixty-four thousand four hundred and thirty-one dollars and twenty-five cents, in payment for township number three, in the thirteenth range west from the east line of the State, and hereby agree to deed the same to them whenever they shall call upon me for that purpose at the land office. The reason why a deed is not given at this time is, that the records of deeds is now at Augusta.

(Signed) JOHN HODGDON,
Land Agent of Maine.

The several answer of Joseph W. Mason.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof, and such parts thereof, as this defendant is advised is material for him to make answer thereto, he answers and says: that at the time of the purchase alleged in the complainant's bill, he was a member of the firm of Norcross and Mason, which firm consisted of himself and Nicholas G. Norcross; that

he has no knowledge of any contract made by these defendants with the State of Maine, in relation to the purchase of the township in the said complainant's bill alleged, (nor has he any knowledge of any agreement made between these defendants and the said Emerson, in relation to the said Emerson's right to dispose of said township, after said Emerson's purchase of said Norcross and Mason, nor of the said Emerson's agreement with the said Williams in respect to the said Williams' right to purchase said township, or to dispose of the same to any other person, nor of the said Williams' sale to this complainant; that he was not present when the said contract was made with the State, nor when the said agreement was entered into by these defendants, if any such were made, whereby the said Emerson was constituted the agent of these defendants to sell and dispose of their interest in said township. That he has no personal knowledge of any matter or thing in the said complainant's bill alleged; that all the transactions in relation to said township, both in the matter of purchase and sale, were conducted by said Nicholas G. Norcross, who was then the partner of this defendant in business; that he has no knowledge, information, or belief, other than is stated in the answer of said Norcross to this complainant's bill aforesaid; that he has been informed by said Norcross, that he, the said Norcross, in the name of the said firm of Norcross and Mason, had purchased one-quarter part of said township, in common with the said Emerson, Roberts, and Farrar, and had given therefor the sum of sixty-four thousand four hundred and thirty-one dollars twenty-four cents; that these defendants had taken from the land agent of the State of Maine his, the said land agent's, agreement to convey to them the said township on demand, and that these defendants had authorized the said Emerson to sell and dispose of the same, according to their said agreement with said Emerson; for the terms of which said agreement this defendant refers to the answer of said Norcross.

And this defendant further answering says, that he has been informed and believes, but of which he has no personal knowledge, that said township was subsequently sold by said Emerson, but to whom, or under what circumstances, he had no knowledge prior to the consummation of said sale; and that said Emerson gave to the said Norcross and Mason his individual notes for their proportion of said township.

And this defendant further answering says, that he has no knowledge of any representations made by the land agent to these defendants, nor of any inducements which actuated them in making said purchase, nor of any representations made by the said Williams to this complainant, nor of any inducements held out to him, or which influenced him, in making said purchase, or of any representations made by the said Emerson, or of any certificates furnished by the said Emerson to the said Williams, or of any representations or concealments of these defendants, or either of them, to the said Williams or this complainant. And this defendant means to say, that he has no personal knowledge in the premises; that the business was wholly transacted by his partner, to whose answer he refers. And this defendant denies all and all

manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. W. MASON.

Sworn to and subscribed before me, at Russia township, this twenty-seventh day of November, A. D. 1841.

JOHN GRANNIS, *Justice of the Peace.*

To the several answers of the defendants, the complainant filed the general replication, Nov. 23, 1842, viz:

CIRCUIT COURT OF THE UNITED STATES, *Maine district:*

The replication of John Doggett, complainant, to the several answers of Wm. Emerson, Isaac Farrar, Nicholas G. Norcross, Joseph W. Mason, and Amos M. Roberts, defendants, to the said complainant's bill.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of the said several answers, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto, by this repliant; without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct and humbly prays as in and by his said bill he hath already prayed.

By T. P. CHANDLER, *his Solicitor.*

And said cause was continued to May term, A. D. eighteen hundred and forty-three, at which term the time to take testimony was enlarged from time to time to the next term; and at said last term, the following petition and order was filed and passed, viz:

CIRCUIT COURT OF THE UNITED STATES, *Maine district:*

JOHN DOGGETT, vs. WILLIAM EMERSON & als. } In equity.

The petition of John Doggett, complainant in the above entitled cause,

respectfully shews, that the time for taking testimony in this cause expired on the day of 1843; that on the application of your petitioner, the time for taking testimony was enlarged until the day of 1843, for the purpose of enabling your petitioner to take the testimony of E. L. Le Breton, esq. That the respondents, for the purpose of shewing the quantity of pine timber cut on the tract of land named in your petitioner's bill in this cause, have taken the testimony of one Caleb Leavitt, who is said to have surveyed the said timber in the woods, and who represents the quantity cut to be about 2,500,000 feet, as your petitioner is informed and believes. That since the said lumber has been brought to market, it has been accurately surveyed by three sworn surveyors of the State of Maine, who have found the actual quantity to be less by twenty per cent. than was represented by the pretended survey of the said Leavitt; and your petitioner has reason to believe, and does believe, that the survey of the said Leavitt is grossly unjust, and was made for the purpose of defrauding your petitioner by falsely representing the quantity of timber cut on the said land. That the last survey of the said lumber was made after the time for taking testimony had elapsed, and your petitioner had always supposed, and been led to believe, until said last survey, that the said Leavitt's survey was correct and made in good faith. But your petitioner now avers that the said Leavitt's survey was made under the direction and control of the defendants, and is grossly unjust and erroneous in all respects. In consideration of which your petitioner prays that the time for taking testimony in this cause may be enlarged for the purpose of taking the testimony of Mr. Howard of Milford, Daniel Davis of Old Town, and Mr. Coburn of Orono, the persons who last surveyed the said lumber. Your petitioner further avers that the testimony of the said witnesses will be, as he is advised, of the utmost importance in determining the rights of the parties in this cause. And your petitioner further states, that for the purpose of showing the actual quantity of timber on the land named in the bill in this cause, he has taken the testimony of three commissioners who were employed by the State of Maine to examine the said land and ascertain the quantity and value of the timber thereon; that after this testimony was taken, and just before the time for taking testimony expired, the respondents took the testimony of two witnesses for the purpose of invalidating the evidence of the said commissioners. That the facts inquired of by the said respondents were not known to the petitioner or his solicitors at the time of the filing of the interrogatories to the said commissioners, nor are they now known to them, nor did they ever have any intimation of the existence of such facts before or at the time of filing interrogatories to the said commissioners, nor until enquired of in the respondents' interrogatories; neither does your petitioner believe them to be true; they were not therefore inquired of, nor could they be, in the interrogatories to said commissioners.

And your petitioner, having had no opportunity to inquire of the said commissioners in relation to the facts inquired of by the respondents in their interrogatories to the said witnesses, now prays that the time for

taking the testimony may be so far enlarged as to allow your petitioner to take the testimony of the said commissioners on further interrogatories touching the several matters inquired of by the respondents in their interrogatories to the said witnesses.

And your petitioner further avers, that the further testimony of the said commissioners will be, as he is advised, of the utmost importance in determining the rights of the parties in this cause.

JOHN DOGGETT.

U. S. A., *Mass., ss:*

Boston, Oct. 4, 1843.

Sworn to before me,

GEORGE S. HILLARD, *Commissioner.*

C. C. U. S., Oct. term, 1843.

JOHN DOGGETT, plaintiff,
vs.
WM. EMERSON and als. } In equity.

And now, at this term, on motion of the counsel for complainant, the court order, that the time for taking testimony in this cause be enlarged, until the first Monday of January next, for the purpose of taking the testimony of Wm. Brown, Drummond Farmsworth, and Atwood Levansaler, William Howard, Daniel Davis, and William Coburn; and on motion of counsel for respondents, that said time be enlarged for the purpose of taking the testimony of Joseph Hanson and George A. Pierce; and that said testimony of Brown, and Hanson, and Pierce, be taken upon the interrogatories and cross interrogatories already filed in the case, and the testimony of said other witnesses upon new interrogatories and cross interrogatories; said new interrogatories to be served on the counsel for respondents on or before the first day of November next, and the cross interrogatories to be filed within fourteen days after the direct interrogatories shall have been so served; and that, if the respondents desire to take other testimony on the subject of the timber cut on said township named in the bill, during the past season, the names of witnesses to be examined for that purpose, with the interrogatories to them, shall be filed on or before the first day of November next, and the cross interrogatories within fourteen days after the service of said interrogatories upon the complainant's counsel.

And on the first Monday of January, A. D. eighteen hundred and forty-four, the following motion for publication of testimony is filed by the plaintiff, viz:

CIRCUIT COURT OF THE UNITED STATES, *Maine district:*

First Monday in January, 1844. *At the rules.*

JOHN DOGGETT, plaintiff,
vs.
WILLIAM EMERSON and als. } In equity.

In this case the solicitor for the plaintiff now moves the court, that

the answers and replication having been duly filed, and testimony taken, and the time for taking testimony having expired, publication of said testimony may now be ordered, according to the rules of said court.

W. P. FESSENDEN,
Sol'r for pl'ff.

And thereupon publication of testimony was ordered to be made on the fifteenth day of said January; at which time the following depositions, on the part of the plaintiff, were opened and filed, viz:

UNITED STATES OF AMERICA,
Maine district, ss. First circuit.

The circuit court of the United States, begun and holden at Wiscasset, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty-two—
[L. S.]

To Frederick Hobbs and Henry Warren, both of Bangor, in said district, esquires, or to either of them, respectively:

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Hazen Mitchell, John Thomas, E. P. Greenleaf, William Brown, C. K. Morrison, Benjamin P. Gilman, witnesses to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, and William Emerson and others defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid next to be holden at Portland, on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this second day of February, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

UNITED STATES, *district of Maine, ss:*

By virtue of the within commission to me directed, I have caused the said Hazen Mitchell, John Thomas, E. P. Greenleaf, C. K. Morrison, and B. P. Gilman, to be brought before me, and each witness, while before me, and apart from all others, was carefully examined on oath

touching the premises; and, having taken his examination, his testimony, in answer to said interrogatories, was reduced to writing by me, and each witness subscribed the same in my presence.

The execution of this commission, therefore, appears in the deposition of Hazen Mitchell, and other papers annexed thereto, marked A and B; also, the depositions of John Thomas, E. P. Greenleaf, C. K. Morrison, and B. P. Gilman, identified by my signature.

FRED. HOBBS, *Com'r.*

Interrogatories to Hazen Mitchell, a witness on the part of the complainant.

1st interrogatory. State your name, age, place of residence, and occupation.

2d. Do you know the parties complainant and defendants in the title to these interrogatories named, or either of them, and how long have you known them respectively, or such of them as you do know?

3d. Have you, at any time, and when, been interested or concerned in the sale of township No. 3, in the 13th range of townships west from the east line of the State of Maine, or have you had any other, and what other, interest in said township, at any time, and when? State fully and particularly.

4th. Did you ever, and when, enter into any agreement with any, and which, of the parties to this cause, or with any other person or persons, and what person or persons, for the purpose of selling the said township, or any part or parcel thereof? If yea, state what the agreement was, and what was done under and by virtue of such agreement. If the agreement was in writing, annex the original, or a copy thereof

5th. Have you any, and what, knowledge of the sale of a portion of the said township to the complainant in this cause?

6th. Were you ever interested with John Williams in the sale or other disposition of the said township, or any part of it; and how were you interested? State fully and particularly.

7th. Who else was interested with you and the said Williams in the sale and disposition of the said township, and what was the interest of such person or persons?

8th. What arrangements did you make for the sale or other disposition of the said land, or any part of it? State fully and particularly.

9th. Did you make use of any, and what, certificates of persons pretending to have explored, or who actually had explored, the said township, for the purpose of ascertaining the quantity and quality of pine timber thereon; if so, what certificates, and whose certificates, and what use did you make of them?

10th. Of whom did you receive such certificates, and when did you receive them, and for what purpose were they delivered to you; and how did you dispose of them, and when?

11th. Whether or no did you receive the said certificates from either, and which, of the defendants in this cause?

12th. If you did not receive such certificates from either of the de-

fendants, whether or no did you exhibit the said certificates to either, and which, of the defendants, before the sale of the said township, or portions of it; and whether or no you communicated the contents of the said certificates to either, and which, of the said defendants; and when and what was said by such defendant or defendants in relation thereto?

13th. What quantity of good pine timber did the said certificates respectively represent to be on the said land?

14th. Were any of the said certificates signed by John Towle, Benjamin Dyer, or John Thomas?

15th. At whose request was the said township explored by the persons giving the said certificates?

16th. Who obtained the said certificates from the said explorers; and when, and where, did you first receive them, and of whom?

17th. Who is Cyrus Goss; where does he live; and what is his business?

18th. Is the said Goss a brother-in-law of William Emerson, one of the defendants?

19th. Whether or no were the said Goss and the said Emerson in any way connected in business at the time of the sale of a part of the said township to the complainant; did they board together, or live together, at that time and before, and have they lived together ever since?

20th. State what was said to you by either of the defendants prior to the sale of a portion of the said land to the complainant, the said Doggett, in relation to the quantity of timber on the said township, and the quality of the said timber?

21st. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. P. CHANDLER,
Solicitor for complainant.

Received and filed January 30th, A. D. 1843.

Cross interrogatories to Hazen Mitchell, on the part of the defendants.

1st interrogatory. State your age, place of residence, and occupation.

2nd. Do you know the parties named in the title to these interrogatories?

3d. Have you at any time, and when, been interested in any bond for the sale of, or in any refusal of the whole, or any part of, the township No. 3, in the thirteenth range of townships west from the east line of the State of Maine?

4th. If you have been so interested, annex every such bond or refusal, or a copy thereof, to your deposition, if you have such originals or copies; and if not, state the date, names of the parties to, and terms of

each, fully and particularly, and the extent of your interest in the same, and the names of all persons interested with you.

5th. When did you first entertain the design of obtaining an interest in said township; and what measures, if any, did you take with a view to obtain such an interest, before you ascertained that the defendants had purchased the township?

6th. Have you at any time taken any measures to procure information relative to the value of said township; and, if so, what?

7th. If you have stated that you directed an examination of said township to be made, state when; whom you employed for that purpose; your reasons for selecting him or them; and what instructions you gave on the subject; and if those instructions were in writing, and you have a copy, please annex that copy.

8th. Whether or no any one was interested or associated with you in your plans relating to this township, when you caused such examination to be made; and, if so, who?

9th. Were you interested with John Williams at any time in a refusal of any part of said township; and, if so, when; who else was interested with you; and what was the nature and extent of the interest of each? If the contract between you and the said Williams was in writing, annex it if you have it, or a copy of it; and if you have neither original or copy, state its terms.

10th. Please annex said refusal, if you have it; or a copy of it, if you have any. And if you have neither, state when and where you last saw it, its date, terms, the names of the parties thereto, and every thing which you know relative to the existence, character, and final disposition of it, fully and particularly.

11th. What do you know relative to the procurement of such refusal? Were you present at a meeting between said Williams and Cyrus Goss when the project of procuring it was discussed? If so, state when and where that was; how long you were present; and all that transpired, fully and particularly.

12th. Had you in your possession, or under your control, and did you deliver, or cause to be delivered, to the said Williams, any certificates or reports relating to the quantity or quality of the timber on said township? If so, state by whom said certificates were signed; their purport; at whose request or procurement they were made; whose property they were; when, where, and how they came into Williams' possession; where, and in whose hands they had been prior to that time; and state fully and particularly all that you know relative to any certificates in the possession of said Williams, yourself, or Cyrus Goss; or which were used, or said to have been used, in the sale of any part of said township. And if you have in your possession any letters or other papers relating to said certificates, or the disposal of them, please annex them, or copies of them.

13th. State whether or no, during the visit of said Williams at Bangor, at the time he obtained said refusal, you read or exhibited to him

said certificates, or copies of them, or know that any other person did so.

14th. Whether or not said certificates were in Bangor at that time.

15th. Whether or no you ever saw or knew the existence of any copy of said certificates, or of either of them, prior to the sale of three-quarters of said township in June, 1835.

16th. Whether or no these defendants, or either of them, had any agency in the procurement or use of said certificates; and, if so, what agency.

17th. Whether or no you exhibited, or know that any other person exhibited, to these defendants, or either of them, (and if either, which,) all or any of said certificates; or informed, or know that any other person informed, them, or either of them, (and if either, which,) of the contents or existence of said certificates, prior to said sale in June, 1835; and, if so, when.

18th. Whether or not you ever heard said Williams, in any conversation or interview with him, prior to said sale in June, 1835, say, or intimate in any way, that he had received any information, or heard any representations, relative to said townships or certificates from either of these defendants, or had had any conversation with either of them on the subject; if so, state what he said.

19th. Whether he said, at any interview prior to his obtaining said refusal, that he had seen Mr. Emerson since his arrival in Bangor.

20th. How long was he in Bangor on that occasion? At what times did he arrive and depart? When did you first and last see him during that visit?

21st. At what hour in the morning did the steamer leave Bangor on the nineteenth of May, 1835? State your knowledge and means of knowledge.

22d. What was your opinion of the value of this township in May and June, 1835?

23d. What credit and weight, if any, did you give to the statements and opinions expressed in the certificates hereinbefore inquired of?

24th. If you employed John Towle to explore this township, state how much he was paid for his services, and by whom; whether he received any extra pay for such services, and how much; and all that you know relative to the employment and payment of those who accompanied him.

25th. Have you any knowledge of said Towles purchasing an interest in said township, or in the profits expected to be realized from the sale of any part of it? If so, state when, of whom, and what interest he purchased; how much he paid for it, and how he paid for it, and fully all your knowledge, and means of knowledge, on the subject; especially in regard to the fact and mode of payment.

26th. Whether or no you have ever been connected with either (and if either, which) of these defendants as partner or associate in business.

27th. What connexion in business, if any, had you with William Emerson prior to said sale in June, 1835? Had he been associated with you in the purchase or sale of land; and, if so, when; in how

many instances; and of what land? State fully, and whether or not you were and had been in the habit of disclosing your schemes and plans to him.

28th. Whether or no you communicated your plans and movements relative to this township to the defendants, or either of them, prior to said sale in June, 1835; and whether you regarded your interest allied or adverse to theirs. Please state fully and particularly on this point.

29th. Whether or not these defendants, or either of them, had any knowledge of the fact, that you were interested in said refusal to Williams prior to the lands being taken under it; and, if so, what knowledge.

30th. Do you know any other matter or thing which may be of advantage to either of the parties in this cause; or that may be material to the matters in issue in this cause? If so, set forth the same fully and particularly as if thereof specially interrogated.

JAS. S. ROWE,
Solicitor for Defendants.

Received and filed January 30, A. D. 1843.

Hazen Mitchell being produced, sworn, and examined on behalf of the complainant, doth depose as follows:

To the first interrogatory My name is Hazen Mitchell. I am forty years of age. I reside in Bangor, and am at present engaged in the commission business.

To the second interrogatory. I do not know the complainant. I do know the defendants, and have been acquainted with them ten years or more.

To the third interrogatory. I was at one time interested in a contemplated sale of said township. In April, 1835, I became interested in a bond obtained by Charles Goddard of William Emerson, I think, which was to run forty days, but no sale was effected or profit derived under said bond.

Again, on the 18th day of May, 1835, I entered into an agreement, in writing, with John Williams, of Dover, N. H., and Cyrus Goss, of Bangor, by which, if said Williams obtained a bond or refusal of any part of said township, we were to share equally in the profit and loss of the enterprise.

I believe Williams obtained a bond of three quarters of said township from William Emerson. Afterwards, and within a month from the 18th May, I made a verbal agreement with Mr. Goss, whereby I proposed to be interested equally with him in the purchase of one-tenth of said township, if he saw fit to buy; but I never received a title deed to any part of said township, nor did I ever realize any benefit from said agreement. These are the only ways in which I was ever interested in the sale or property of said township.

To the fourth interrogatory. No; I never entered into any agree-

ment with the parties, nor with any other persons than those named in my last answer, in regard to said township.

The following is a copy of the only agreement, in writing, that I ever made with any person to my recollection on the subject, to wit:

"BANGOR, 19th May, 1835.

"If John Williams, one of the signers hereto, shall obtain a bond or refusal of any part of township No. 3, in the 13th range, and if all or either of us shall sell the same part, we are to equally share in the proceeds over the amount actually paid or required for said bond, and said Williams is to equally share with Cyrus Goss and Hazen Mitchell in any advance or profit or loss which may accrue from any interest they may have in any other part of said township, not included in said bond or refusal.

Signed "JOHN WILLIAMS,
"CYRUS GOSS,
"HAZEN MITCHELL."

I think, this agreement was in fact made on the 18th May, in the evening, although it is dated the 19th.

To the fifth interrogatory. I have no knowledge of the sale of a portion of the township to the complainant.

To the sixth interrogatory. In no way, except as I have already stated, was I ever interested with said Williams to my recollection.

To the seventh interrogatory. Mr. Goss, Mr. Williams, and myself, were alone concerned in the transaction before stated, and in no other in regard to it.

To the eighth interrogatory. I made no arrangements myself in regard to the sale or other disposition of said land.

To the ninth interrogatory. By referring to my correspondence, I find that on the 26th March, 1835, I employed John Towle, who was then at work on township No. 1, range 10, to go and look at No. 3, range 13, and to explore it particularly enough to give me his opinion of the timber, its probable quality and quantity, and its situation as to water, and his views of the value of the township compared with that of No. 2, range 12, and No. 1 in the 11th range, and No. 1 in the 10th range, and requested him to take Mr. Dyer, or one of his best men, to go on to the town with him. Towle thereupon went, and took with him Mr. Dyer and Thomas, of Brownville, and they came to Bangor about the middle of April, and made report to Cyrus Goss, who transmitted their certificate to me at Boston or Portland. I immediately handed them to Mr. Goddard, who had a bond of part of said township No. 3, range 13, as I before stated, in which I was interested.

I said that on the 19th of May, 1835, I wrote to Mr. Goddard, that if his bond from Mr. Emerson should expire without his making any sale, he would, on the Friday following the date of my letter, enclose the plans and Towle's report in a sealed sheet, and leave it at Thomas A. Dexter's, notary's office, addressed to John Williams, esq., of Dover, New Hampshire, who would probably call on Mr. Dexter for the same

on the Saturday or Monday then next. I cannot say whether Mr. Williams got them or not. I made no other use than I have already stated of said report or certificates.

To the tenth interrogatory. I have already stated of whom and when I received said certificates, and how and when I disposed of them. They were obtained by me and Mr. Goss, to enable us to decide whether it might or might not be for our advantage to obtain any interest in said township, and for no other reason, although they were afterwards used in the manner stated by me.

To the eleventh interrogatory. I did not receive said certificates from either of said defendants.

To the twelfth interrogatory. I did not exhibit said certificates to either of said defendants, at any time; nor did I ever communicate the contents of said certificates to either of them; nor did I ever have any communication with either of them in relation thereto, to my knowledge or recollection.

To the thirteenth interrogatory. I do not recollect what quantity of good pine timber said certificates represented to be on said land.

To the fourteenth interrogatory. It strikes me the principal certificate was signed by John Towle, and that Dyer and Thomas signed under Towles, certifying that they coincided in opinion with Towles.

To the fifteenth interrogatory. Said township was so explored by my request.

To the sixteenth interrogatory. I obtained said certificates as I have before stated. I have also stated the manner in which, and the time when, I received them, and of whom I received them.

To the seventeenth interrogatory. Cyrus Goss is a citizen of Bangor, and is engaged in the auction and commission business, when at home. He at present is a member of the Maine Legislature.

To the eighteenth interrogatory. Said Goss is the brother-in-law of William Emerson, one of said defendants.

To the nineteenth interrogatory. The said Goss and said Emerson were not to my knowledge in any way connected in business at the time inquired about, or at any other time. I believe Mr. Emerson boarded with Mr. Goss at and before that time, and ever since. He now does.

To the twentieth interrogatory. I have no recollection that either of the defendants ever said any thing to me at any time relative to the timber or its quality on said township.

To the twenty-first interrogatory. I cannot state any thing further material that I can recollect.

Cross examined.

The first and second cross interrogatories are omitted by request of James S. Rowe, esq., defendant's solicitor.

To the third cross interrogatory. I have been so interested, as I have already stated, and not otherwise.

To the fourth cross interrogatory. The bonds to Goddard and Wil-

liams, in which I was interested as before mentioned, never were in my possession. I have no copies of them.

I think the date of the bond to Mr. Goddard was the 8th of April, 1835. I believe the bond was made by William Emerson to Charles Goddard. There might be other names in the bond, but I do not remember how it was. The bond was for the sale of three quarters of township No. 3, R. 13, I think. To run for forty days. The refusal of the three quarters for forty days was valued at two thousand five hundred dollars. My interest in this bond was one third, according to a verbal understanding between Mr. Goss, Mr. Goddard, and myself. I believe my name was not mentioned in the bond. No other persons were interested in that bond, I think.

To the fifth cross interrogatory. In the winter of 1835, I first entertained the design of obtaining an interest in said township. I called on the land agent of Maine, at Augusta, on my return from Boston to Bangor, to see at what price said township could be had, when I was informed that it had been sold to the defendants.

To the sixth cross interrogatory. I did take measures in March, 1835, to procure information relative to the value of said township. For what I did in this respect, I would refer to my answer to the ninth direct interrogatory.

To the seventh cross interrogatory. It was in March, 1835, that I employed said Towle for that purpose. I selected Towle mainly for the entire confidence I had in his judgment, and in any report that he might furnish. I also selected him for the reason that he was then at work for me, on a township near by. My instructions to Towle were in writing. I annex a copy marked A.

To the eighth cross interrogatory. Cyrus Goss, of Bangor, was alone interested with me in my plans relating to this township, when I caused said examination to be made.

To the ninth cross interrogatory. I would refer to my answers to the third and fourth direct interrogatories for my answer to this question.

To the tenth cross interrogatory. I never saw the bond or refusal which Williams obtained, nor a copy of it. I cannot speak of its date, terms, or the names of the parties to it, or the final disposition of it.

To the eleventh cross interrogatory. I think I must say I know nothing relative to procuring said refusal, except what I have heard. I was present at a discussion between Williams and Goss on the subject of procuring such refusal. It was on the evening of the 18th of May, 1835, at Mr. Goss's counting room. I was present there an hour or two, I should think. The paper, a copy of which makes part of my answer to the fourth direct interrogatory, was then and there drawn up by me, and signed by John Williams, Cyrus Goss, and myself.

To the twelfth cross interrogatory. I had at one time in my possession the certificates or reports of John Towle, Dyer, and Thomas, as mentioned in my answer to the ninth direct interrogatory, which I delivered to Charles Goddard, and afterwards directed him to leave the same with Thomas A. Dexter, notary, for said Williams, as in said

answer I have particularly stated. They were signed as mentioned, by John Towle, Dyer, and Thomas. They purported to represent the quantity and quality of timber, and the general character of the township, as I think. I cannot state particularly the terms of said certificates. They were made at the request or procurement of Mr. Goss and myself. Goss procured the certificates of Dyer and Thomas. They were properly the property of Mr. Goss and myself. We shared equally in the expense of the exploration. I do not know that said certificates were ever in Williams' possession. I only know that I directed them to be left for him at Mr. Dexter's office, by referring to my letter to Charles Goddard, of May 19, 1835. They were first with Goss, then with me, and then with Mr. Goddard, prior to my directing them to be left for Mr. Williams. I know nothing of any other certificates than those already referred to, which were used or said to have been used, in the sale of said township. I annex a copy of my letter of the 19th of May, 1835, to Charles Goddard. It is marked B, and is the only letter regarding the certificates which I can find.

To the thirteenth cross interrogatory. I did not read or exhibit to Williams, while at Bangor, at the time inquired about, said certificates, nor copies of them, nor do I know that they were read or exhibited to him by any other person.

To the fourteenth cross interrogatory. Said certificates were not in Bangor at that time.

To the fifteenth cross interrogatory. I neither saw nor knew of the existence of any copy of said certificates, or of either of them, at any time.

To the sixteenth cross interrogatory. Said defendants had no agency in procuring said certificates, nor had they to my knowledge any agency in the use of them.

To the seventeenth cross interrogatory. I never exhibited said certificates to either of said defendants. I never knew that they were exhibited by any other persons to either of said defendants. I have no knowledge or recollection that said defendants were informed of the contents of said certificates, or knew of their existence.

To the eighteenth cross interrogatory. I never heard said Williams say any thing at any time about having received any information from the defendants concerning said certificates, or the township, or from either of them.

To the nineteenth cross interrogatory. Said Williams did not, to my remembrance, say that he had seen Mr. Emerson since his arrival in Bangor, and prior to his obtaining a refusal of the township. I have no recollection of saying any thing about it.

To the twentieth cross interrogatory. I do not know how long Williams was in Bangor on that occasion. I do not know at what time he arrived here, but I think he left here on Tuesday morning, the 19th of May, 1835, in the steamboat. I think the only time I saw him was at Mr. Goss' counting room, on the evening of the 18th of May, 1835.

To the twenty-first cross interrogatory. By reference to an advertise-

ment in the Bangor Whig and Courier, dated the 14th of May, 1835; the steamer Bangor was advertised to leave at 6 o'clock, on Tuesday morning, the 19th of May. I do not know that she in fact left on that morning, but she has usually left according to her advertisements. I have no other means of knowledge than my reference to said advertisement.

To the twenty-second cross interrogatory. I believed said township to be as valuable as any other timber township in the State, in May and June, 1835.

To the twenty-third interrogatory. I gave entire credit to said certificates, and had no doubt of the truth of the facts therein stated.

To the twenty-fourth interrogatory. At the time of the exploration, Towle was in my employment, at thirty-five dollars per month, on township No. 1, R 10. He was employed fourteen days in exploring No. 3, R. 13, and in preparing and rendering his report, for which time I paid him at the same rate, eighteen dollars and eighty-five cents, and his expenses at the same time, four dollars and fifty cents, making in all twenty-three dollars and thirty-five cents. He received no extra pay therefor. I think that Mr. Goss settled the bills of Dyer and Thomas. I do not know the amount of them paid by Goss.

To the twenty-fifth interrogatory. About the middle of June, 1835, Mr. Towle told me that he had engaged to give Mr. Goss one thousand dollars for one-half the profits that should be realized on the sale of one-tenth of the township, and ordered me to pay Mr. Goss the same sum on his account, which I did. I was indebted to Towle at that time in about that sum for services he had rendered that year and previous years. The payment was made by me by the acceptance of Towle's draft, payable to the order of Mr. Goss on a short time at the Suffolk bank, and was there paid.

To the twenty-sixth interrogatory. I have never been connected or associated with either of these defendants as a partner or associate in business.

To the twenty-seventh interrogatory. I had no connection with Mr. Emerson in any business, except previous to June, 1835. I had had an interest in township No. 1, R. 10, with Emerson and C. Goss. This is the only township in which I had been interested with Mr. Emerson either in the purchase or sale. I purchased a farm of Mr. Emerson in Howland, about the same time, and gave him back a mortgage thereof. I know of no other transactions in land in which Mr. Emerson had then been associated, or in any way connected with me. I now recollect, however, that I mortgaged to him a piece of land in Hampden, in 1834, to secure the payment of three thousand dollars due to him from me. I had not been in the habit of disclosing my plans or schemes to Mr. Emerson particularly. I might have spoken to him of them at some times. When he embarked in the purchase of No. 1, R. 10, I disclosed to him my views, particularly in regard to said township.

To the twenty-eighth interrogatory. I never did communicate my plans or movements in regard to township No. 3, range 13, to either of

the defendants, at any time, to my knowledge. I do not think that the interest that I had in it, or the relation in which I stood to it, was in any way connected with or allied to theirs.

To the twenty-eighth interrogatory. I am not aware that either of the defendants had knowledge of the fact that I was interested in said refusal to Williams at any time.

To the twenty-ninth interrogatory. I do not know of any other thing that would be material.

HAZEN MITCHELL.

Schedule A, annexed to the deposition of Hazen Mitchell.

BANGOR, *March* 26, 1835.

Mr. TOWLE:

Sir: Mr. Goss and myself are desirous to have you go and look at No. 3, in the 13th range, and explore it particularly, enough to give us your opinion, the amount of timber, its probable *quantity* and *quality*, and the situation as to water, and your notions of value of the township compared with that of the Cummings Carribou, No. 2 in 12th R., and No. 1 in 11th R., and No. 1 in 10th R., and let us have your report as soon as you can; if you think *very highly* of its value—say if as good as No. 2 in 12th R.—send a man here, or come yourself if practicable with the report, and you or he can return immediately by stage to Brownville; if as good as No. 1, 10th R., or as No. 1, 11th R., please send your report by a careful man out to Brownville, and mail it to me there. Get Mr. Dyer, or one of your best men, to go on to the town with you if you can, and Kimball, if he could stop long enough; then he could bring your reports. Your obd't serv't,

HAZEN MITCHELL.

Schedule B, annexed to the deposition of Hazen Mitchell.

BANGOR, 19*th May*, 1835.

CHAS. GODDARD, ESQ.:

Dr. Sir: I do not believe that Mr. Goss and I shall be able to get any more of No. 3, 13th R., taken here within the time we have, (4 days,) and if you should on Thursday next conclude to give up the three-quarters, as intimated in yours of 16th inst., will you please on Friday enclose the plans, and Towle's report, in a sealed sheet, and leave it at Thos. A. Dexter's, notary's office, addressed to John Williams, esq., (of Dover, N. H.,) who will probably call on Mr Dexter for same on Saturday or Monday next. Mr. Williams this morning got the refusal for a short time of said three-quarters at 6½ per acre, if it should not be taken by us by next Saturday, with the understanding that the Greenland gentlemen shall have one-quarter at the 6½ per acre, if they choose after their return; they expect to leave here to-morrow morning for the township. If we do not get it taken up, I shall most truly regret the loss of the money, time, and labor we shall have incurred; but we must endeavor to make some other move, and a better, that shall replace the loss. Your obedient servant,

H. MITCHELL.

MAINE DISTRICT, *ss:*

On this twentieth day of March, A. D. 1843, the aforesaid deponent was examined, and cautioned, and sworn agreeably to law to the deposition aforesaid by him subscribed.

Before me, FRED. HOBBS,
Commissioner.

Interrogatories to John Thomas, a witness on the part of the complainant.

1st Interrogatory. State your name, age, place of residence and occupation.

2d. Have you any and what knowledge of township No. 3, in the 13th range of townships west from the east line of the State of Maine?

3d. Have you ever been on the said township, and if so, at what time or times; and why did you go there, how long did you remain there, who went there with you, and what did you do there?

4th. State whether or no you have made any explorations of the said township for the purpose of ascertaining the quantity of timber thereon; if so, how long did you spend on the township, and what was the result; what quantity of timber did you find on the township, and what was its quality?

5th. At whose request did you make such explorations?

6th. Have you at any time, and when, made any certificate or other paper relating to the quantity of timber on said land? If yea, what did you do with such certificate or paper, and at whose request was it made?

7th. State fully and particularly all you know in relation to such certificate or paper, and all you know of any other certificates relating to the quantity of timber on the said land; and what quantity of timber such certificates represented to be thereon.

8th. Do you know any thing in relation to certificates signed by John Towle, and the mode in which said certificates were got up, and the purposes for which they were got up? If yea, declare all you know fully.

9th. Had you any and what conversation with the said Towle, in relation to his certificate?

10th. Declare fully all you know in relation to the quantity of timber on the said land.

11th. If you know of any attempts made by John Towle, Cyrus Goss, or any other person, to manufacture certificates or reports, in relation to the quantity and quality of timber on the said land, for the purpose of deceiving purchasers, declare all you know fully and particularly.

12th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. P. CHANDLER,
Solicitor for complainant.

Received and filed January 30, A. D. 1843.

Cross interrogatories to John Thomas, on the part of defendants.

1st. If you have stated, in answer to any previous interrogatory, that you explored this township at the request of any other person than John Towle, state when, where, and how, said request was made, and, if in writing, annex it; if verbal, state in whose presence it was made, and all the conversation on the subject, and what inducement was offered you, and what pay you received.

2d. What pay did you receive for exploring with Towle and Dyer; from whom, and when and where, did you receive it?

3d. Do you think that Mr. Goss paid you enough for your labor on that occasion?

4th. Have you at any time complained to your brother, or to any other person, that Mr. Goss did not pay you enough; have you ever said "he was a small man, and ought to have paid you more," or any thing of similar purport?

5th. How many townships and parts of townships had you ever explored prior to your exploration of this? State the whole.

6th. What was the reputation of township No. 2, 12th range, in respect to timber and value in April, A. D. 1835? Was not this No. 2 considered as valuable as any township in the State?

7th. Have you ever given a false certificate in relation to any township, or signed any such certificate with the intent to deceive, or to enable others to deceive, purchasers? If yea, what certificates; what was your inducement and what your reward?

8th. If you have undertaken to state in your deposition any conversations, state who was present at each of said conversations, when and where it was had, the occasion of it, every thing that was said, the order in which it was said, and by whom.

9th. If, in answer to the eighth and eleventh direct interrogatories, you have undertaken to state any facts relating to the matters therein inquired of, state your means of knowledge fully and particularly.

10th. From what place did you start to explore No. 3, 13th range, with Towle and Dyer; and where did you part with them on your return?

11th. Are you the same John Thomas that gave a deposition in the case of Henry Warren et al., plaintiffs in equity, vs. William Emerson et al.?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed January 30, A. D. 1843.

John Thomas, a witness produced, sworn, and examined, on behalf of the complainant, doth depose as follows:

To the first interrogatory. My name is John Thomas; I am in my fiftieth year of age, and reside in Brownville. My occupation in summer is farming. Latterly have been employed during the winter in scaling mill logs; formerly followed lumbering.

To the second interrogatory. I have some knowledge of that township; I have known it since the spring of 1835.

To the third interrogatory. I was on it in the spring of 1835, and was on Ragged lake again in 1842. In 1835 I went there at the request of John Towle, to explore it for Cyrus Goss, Hazen Mitchell, and others, as Towle informed me. I went as pilot, to show them the way from the Namakeita valley to the Caribou lake. We were on the township, as near as I can recollect, about two days and a half. John Towle and Benjamin Dyer went there with me; while there we travelled about when the weather would permit, and as far as we could; it was very soft and slumpy, and we could get along very slowly.

To the fourth interrogatory. When Mr. Towle spoke to me to go, I understood him that it was his business to make an exploration of said township to ascertain the quantity of timber, and to know whether it was a good township or not. We spent about two days and a half on the township, as near as I can recollect; and in exploring we first struck the line of the town on the north shore of Carribou lake, and continued up the lake on the northern shore to the head of the lake; we then shaped our course at first northwesterly from the head of the lake, travelling westerly, and judged we might have travelled two miles; in that distance the growth was a mixture of hard wood, spruce, and some pine. We climbed several times, but the air was thick and hazy, and not a good day to take observations. There appeared to be a very heavy growth of pine timber south and west of us. In the morning of the second day we shaped our course southerly, and soon left the ridge which we had been travelling on, and came to a flat covered with a thick growth of pine; we found it to be rather of a small size, and very rotten. I counted the first sixteen trees that I met, and the first fifteen were rotten. As near as I can recollect this flat was about half a mile in extent, and I came to the conclusion that there was not more than a sixteenth part of it sound. Finding the flat rotten, we continued our course southerly, to get upon a ridge which appeared to be covered with a growth of pine timber. The weather becoming very thick, after travelling a mile and a half or two miles, and Mr. Towle having neglected to put up a sufficient quantity of provisions, we concluded to shape our course for the lake. We then shaped our course northeasterly, and soon left the flat, and struck a ridge of land where Mr. Dyer or Towle climbed. I saw some timber southeasterly, a few rods distant, and went and examined a few of the trees, and found them large and nice. When they had taken their observation, they concluded to continue on their course. We then passed through a growth of scattering pine, mixed with hard wood and spruce; they appeared to be, in a fair proportion of them, sound, but we did not stop to examine them particularly. We struck a small pond and camped as it began to rain. Our stock of provisions being nearly exhausted, we passed down the pond and stream to the head of Carabou lake, examining the stream as we went along; we then left the township. I did not think we had seen enough of the township to form an opinion of any definite quantity of timber on it, and I can now express no opinion as to the quantity. The timber on the

high land was good, as far as I could judge; that on the flat was very poor, small, and rotten, as far as I saw it.

To the fifth interrogatory. I made the exploration at the request of John Towle.

To the sixth interrogatory. I did once make a certificate of the quantity of timber on said township, as it appeared from casual observation, and compared it in the certificate with some others that I had crossed through. I made it at the request of Cyrus Goss, and delivered it to him.

To the seventh interrogatory. I have never heard of said certificate till last night. I never knew of its having been used. When I presented an order from John Towle on Cyrus Goss, for my pay for piloting them on to the township, he presented me with a report or certificate, signed by Towle and Dyer, stating the township to contain a hundred and fifty million feet of timber, and requested me to sign it. I refused to do so. I have no personal knowledge of any other report or certificate in regard to said township.

To the eighth interrogatory. I know of no other certificate relating to said township by John Towle, or of the manner in which they were got up, or for what purposes.

To the ninth interrogatory. I had a conversation with Towle about the manner of making certificates when we were in camp, at the pond on the township, and before the certificate or report of our exploration was made by him to Goss. Towle said he did not know how to make the report, because he did not know whether Mr. Goss wanted to buy or sell. If he wanted to buy he should not report over ten or twelve millions, but if he wanted to sell he should say one hundred and fifty millions, and no mistake. If his employers, Goss and Mitchell, were standing by, he should say to them, "Easy Lord, easy Lord, it is not there." Towle agreed with me, when I left the Namakanta valley to pilot them, to pay me for a journey to Bangor to carry the report; but, when we got through exploring, Towle said as he did not know whether they wanted a report to buy or sell by, he should have to go to Bangor himself before he made the report.

To the tenth interrogatory. I can state nothing more than I have already done, as to the quantity of timber on said township, except that, when I was at Ragged lake last winter, I saw pine tops in the distance in a northerly, northeasterly, and northwesterly direction. There appeared to be a heavy growth, but I cannot speak of the quantity or quality of it.

To the eleventh interrogatory. At the time I made my report or certificate for Mr. Goss, or soon after, (my impression is it was at the time,) I was speaking of the rotten timber on the flat land, when Mr. Goss said "you ought not to mention to western people that there is such a thing as rotten timber; let them find it out themselves."

To the twelfth interrogatory. I know nothing further of my own knowledge.

Cross examined.

To the first cross interrogatory. I never explored said township at the request of any other person than John Towle.

To the second cross interrogatory. I received five dollars for exploring by Towle's order on Cyrus Goss, which was paid me by Mr. Goss at the time I gave him that report in Bangor, at his store.

To the third cross interrogatory. Mr. Goss paid me the amount of the order, but that was not what I ought to have received. Towle agreed to pay me two dollars per day while exploring, and to pay my journey to Bangor to bring down the report. He only paid one-half what he agreed to for exploring by the order on Mr. Goss, but Mr. Goss said perhaps they would be willing to pay me something more if I would sign Towle and Dyer's report.

To the fourth cross interrogatory. I think it very likely that I have complained that I did not receive enough for my services, but it is so long since that I do not recollect to whom I so complained. I don't recollect of having said that Mr. Goss was a small man, and ought to have paid me more. There has been a good deal of talk about my pay, but I cannot recollect what has been said.

To the fifth cross interrogatory. I do not recollect how many townships, or parts of townships, I had explored prior to this. I have kept no written account of them. I have been accustomed to looking after timber since 1831 or 1832, and had explored several townships before this. In 1833, I explored and appraised the timber, as one of three commissioners, on the westerly division of the Hopkington Academy grant. In the spring of 1834, I explored the easterly half of township letter A, range 10. In the fall of 1833, I explored the principal part of No. 3, range 9, north of Waldo patent. I had been on to other tracts, but I do not now recollect the times when; but was before this exploration.

To the sixth cross interrogatory. The reputation of township No. 2, 12 R, in the spring of 1835, (April,) was good. It was reported by some to be as good as any township in the State.

To the seventh cross interrogatory. I have not intended to give false certificates. I have never given one knowing it to be false. I have never signed any such certificate with an intent to deceive, or to enable others to deceive, purchasers. I never received any thing for signing any paper; nothing more than my pay for exploring.

To the eighth cross interrogatory. At the conversation between me and Towle at the camp, as testified to, Benjamin Dyer was present. I think he was; he might have stepped out. The conversation between me and Mr. Goss was at his store in Bangor; I don't recollect whether any person was present or not. The occasion of my conversation with Towle was his not knowing whether Goss wished to buy or sell; that of the conversation with Mr. Goss and myself, was my refusal to sign Dyer and Towle's report, and likewise Towle not having made out my pay as I expected. There was a good deal of conversation between

Goss and myself in regard to the general appearance of the township, which I do not now recollect. Towle said he did not know how to make out the certificate, for he did not know whether they wished to buy or sell; if they wished to buy, he should not think it was safe to carry it higher than ten or twelve millions of good timber; but if they wished to sell, he should report a hundred and fifty millions, and no mistake; that if his employers were there, he should say "Easy lord, easy lord, it is not there." I took Mr. Towle at the time to be in sport, till the report was offered me to sign. When I refused to sign the report, Mr. Goss said it was merely giving an opinion; he did not see how it could harm me, and it might be of great advantage to them. I observed to him that hasty opinions made bad bargains, and that if he wanted my opinion, he must pay me for my time till I could explore the township, so that I could make it up correctly; that I could not give an opinion for another man any better than I could for myself. Mr. Goss said as I had been on to the township, I ought to make a report. I told him I was willing to give him a general report; he said if I would sign Towle's report, perhaps they could pay me something more. I made him a report on general terms, and he paid Towles' order. During our conversation, I was telling Goss that the timber on the flat land was a good deal rotten; and he spoke up, and said you ought not to mention such a thing as rotten timber, but let purchasers or western people find it out for themselves. There was considerable conversation that I do not now recollect.

To the ninth cross interrogatory. I know nothing of matters inquired of in the eighth direct interrogatory, except by report. Mr. Goss, when personally present, made the remark to me about rotten timber, as testified to in my answer to the eleventh direct interrogatory.

To the tenth cross interrogatory. We started from No. 1, R. 10, the Namakanta Valley, to explore No. 3, R. 13. On our return we parted at Wadleigh's camp on No. 1, R. 11.

To the eleventh cross interrogatory. I am the same John Thomas that gave my deposition in the case of Henry Warren et al., in equity, vs. William Emerson et al. JOHN THOMAS.

DISTRICT OF MAINE, *ss:*

On this twelfth day of April, A. D. 1843, the aforesaid deponent was cautioned, examined, and sworn agreeably to law, to the deposition aforesaid by him subscribed.

Before me, FRED. HOBBS,
Commissioner.

Interrogatories to E. P. Greenleaf, William Brown, C. K. Morrison, and Benjamin P. Gilman, witnesses, on the part of the complainant.

1st interrogatory. What is your name, age, place of residence, and occupation.

2d. Have you any, and what, knowledge of township No. 3, in range 13, of townships west from the east line of the State of Maine.

3d. Whether or no have you at any time, and when, made any and what explorations of the said township, with the view of ascertaining the quantity and quality of timber thereon?

4th. What is the quantity, and what the quality, of the timber on the said township? State as fully as you can.

5th. What is the value of the land without the timber, and what is the value of the land with the timber thereon?

6th. Did you give your evidence before the commissioners on the petition of William Emerson, to be relieved from his liabilities to the State of Maine; if yea, does your evidence given at this time agree with what you testified on that occasion?

7th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. P. CHANDLER,
Solicitor for complainant.

Received and filed, January 30, A. D. 1843.

Cross interrogatories to E. P. Greenleaf, William Brown, C. K. Morrison, and Benjamin P. Gilman.

1st. Is not said township very heavily timbered? Including both sound and rotten, is there not a very large quantity of pine on it? Do you know another township that has more, or as much, pine timber on it?

2d. What opinion would one who had examined said township No. 3, 13th range, partially, but not sufficiently to test the soundness of the timber, form of it?

3d. How much and what parts of said township were not examined by you?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed, January 30, A. D. 1843.

Ebenezer P. Greenleaf being produced, sworn, and examined on behalf of the complainant, doth depose, as follows:

Interrogatory first. I am thirty-seven years of age; reside in Williamsburg. I am usually engaged in lumbering during the winter, and in farming in summer.

To the second interrogatory. I have some knowledge of the township No. 3, range 13; I went on to it in the fall of 1839.

To the third interrogatory. I did once explore some lots on said township. In 1839, B. P. Gilman, Wm. Brown, C. K. Morrison, and myself, went upon the west part of said township and explored certain lots which had been represented to us as containing a large quantity of valuable pine timber; and we concluded, if on examination we found the timber as represented, we should go on and lumber there on our

own account. In making the exploration, we followed up Pine stream till we struck the north line of the township on lot numbered two; we then traversed lots one, two, three, seven, eight, nine, thirteen, fourteen, nineteen, twenty, twenty-five, and twenty-six. We also went on to lot twenty-seven or twenty-one, a hard wood ridge, and climbed to overlook the country. The lots which I have named were all dotted as having timber upon them on the plan we had with us, and scattering timber on other parts of said township were also dotted on said plan. We found the pine timber on the township, in traversing said lots and climbing, to be as it had been represented on the plan. There was a great quantity on the lots marked as timber lots, but on an examination of the timber, we found it very crooked and rotten, and we all thought we never saw such ill shapen trees as there were there; and we finally concluded, considering the bad quality of the timber, the smallness of the stream, and the difficulty of driving, that we would not operate there.

To the fourth interrogatory. I did not attempt to make any estimate of the quantity. I have already spoken of the quality. I don't feel willing at this time to express any opinion of the quantity. There was a great deal of it.

To the fifth interrogatory. I consider timber land in this part of the State of no value without the timber. It can never be cultivated; and the hard wood land on this township is so remote, and it will be so long before it will be settled, that it can be of very little, if any value, to any one. If the whole township was like that which I saw or explored, I should not think the land, with the timber upon it, was worth more than three or four shillings an acre; but the stumpage might make it worth a dollar an acre.

To the sixth interrogatory. I did give my evidence in said case before the commissioners. My intention is to testify to the facts now as then. It may differ in form, but I think not in substance.

To the seventh interrogatory. I do not recollect any thing further material to be stated, of my own knowledge.

Cross examined.

To the first cross interrogatory. I have already stated that the lots marked as timber lots were heavily timbered. There is a very large quantity of sound and rotten on those lots, or rather of rotten timber. I think I do know a township that has been cut upon a good many years, that has now more timber upon it than there is upon this township. The lots which I explored, however, on this township, are as heavily timbered as we often see.

To the second cross interrogatory. I think a person who had examined the township No. 3, R. 13, partially, but not sufficiently to test the soundness of the timber, would say there was a great deal of timber on it. In climbing, for instance, he would see a great many pine tops.

To the third cross interrogatory. We only examined the lots named in my answer to the third direct interrogatory on the westerly and north-

westerly part of the township. I refer to my answer to the third direct interrogatory to show the manner and extent of my examination of said township.

E. P. GREENLEAF.

DISTRICT OF MAINE, *ss:*

On this eleventh day of February, A. D. 1843, the aforesaid deponent was examined, cautioned, and sworn agreeably to law to the deposition aforesaid by him subscribed.

Before me, FRED. HOBBS,
Commissioner.

Charles K. Morrison, a witness, produced, sworn, and examined on behalf of the complainant, deposes and answers as follows:

First. My name is Charles Kent Morrison. I am about thirty years of age, reside in Lebec, in the county of Piscataquis, Maine, and am a trader in merchandise.

Second. I have some little knowledge of township No. 3, range 13, of townships west from the east line of the State.

Third. I did once only; and in October, 1839, I think it was, made an exploration of said township, or a part of it rather, with a view to ascertain the quantity and quality of pine timber upon it. We explored about twelve sections lying on Pine stream.

Fourth. The quantity we did not pretend to estimate; the quality we considered very poor. When we first entered on the township, we all climbed and saw what we supposed was a fine growth of timber; but when we came amongst it, it proved to be the rottenest timber we ever saw. We could count thirty or forty trees about us that were not worth cutting. As we kept back from the stream further, the timber was more scattering, and generally of little better quality.

Fifth. The part that we went on to I should consider of very little value without the timber. At the time I was there, I would not have taken a gift of it without the timber.

I do not feel able to give an opinion of the value of the land with the timber on it. We went there to look out for a chance to operate, and not to value the land or the timber.

I should think the value of the township had advanced considerable since I was there, in consequence of increased facilities for getting on to it, and for driving logs.

Sixth. I gave my deposition before Israel Washburn, junr., esq., for Mr. Emerson, or at his request. I don't know what use he made of it. As far as I recollect, my evidence now given agrees with my deposition given before Washburn.

Seventh. I don't know as I think of any thing that is important to either party.

Cross examined.

First cross. The part that we went on to is very thickly timbered. There is, taking the whole of the pine growth together, a good deal of

it. I cannot say whether there is another township, that has more or as much pine timber on it. I only went over a small part of the township.

Second cross. A person who was not much acquainted with timber, in passing through it, would form an opinion that it was of a better quality than it really was, or would prove to be on a careful examination by a person who knew more about timber and timber land.

Third cross. I think we were on sections numbered 2, 3, 8, 9, 14, 15, 20, 21, 26, 27, 25, 19, and 13. We explored in the neighborhood of Pine stream only, but I cannot speak of the sections positively.

C. K. MORRISON.

September 22, 1843. Subscribed and sworn, before me—
FRED. HOBBS, *Commissioner*.

Benjamin P. Gilman of lawful age, being produced, sworn, and examined on behalf of the complainant, doth depose as follows:

To the first interrogatory. Benjamin P. Gilman is my name. I am forty-four years old nearly. I reside in Lebec, in the county of Piscataquis, Maine, and my principal occupation is that of a lumber man.

To the second interrogatory. I have some knowledge of it. I went on to it in 1839 for the purpose of looking at the timber for lumbering.

To the third interrogatory. I went on to a small portion of the town in 1839, which was the only time I ever went on it. My object was to ascertain the quantity and quality of the timber, and to see if there was enough to justify me in putting on teams. There was quantity enough, but I did not like the quality of it. I now have a plan of the township, which shews the lots on Pine stream, so called, on to which I went. I partly examined the timber on ten lots. I did not make a close and thorough examination, following up every tree, but I formed my opinion from what I did see. These lots were numbered in miles square, and were one, two, seven, eight, thirteen and fourteen, nineteen, twenty, twenty-five and twenty-six. Perhaps we were a little on the edges of some other lots, but did not make a thorough examination of any one lot.

To the fourth interrogatory. I can only speak from what I saw on the exploration referred to in my last answer. I never made any estimate of the quantity. I think the timber was as thick on those lots, for such large timber, as I ever saw it. I cannot now form any opinion of the quantity on those lots that could be relied upon, but should judge there were trees enough there, if they had all been sound, to have made from seven to ten millions of lumber. The timber was generally rotten. There was some on lots twenty-six, twenty, and fourteen, that was what we call sound timber, and was very handsome; we thought, enough for one six-ox team, say from five to seven hundred thousand. This was the opinion of myself and three others who explored with me.

To the fifth interrogatory. I would not give more than ninepence

an acre for the land which I explored, without the timber. I do not think it is worth more than that. When we came off that township in 1839, I thought the land, as timber land, was not not worth more than two or three shillings an acre. We supposed the expense and delay in driving the logs would be such, as to render the timber of little value at the mills; but since that time, by erecting dams on the west branch of Penobscot river, they have been able to drive logs from the north line of this township, and twenty or thirty miles above it, in one year; and for this reason, I am inclined to think it more valuable, and that the timber or stumpage would now sell for nearly twice as much as it would in 1838 or 1839. Roads have been cut on to the township since 1839, which would make it less expensive in operating on there. From these considerations, I should now think the land, as timber land, if it is all like that which I explored, was now worth a dollar an acre.

To the sixth interrogatory. I did not I once gave my deposition before William Abbott, esq., but I don't know where it was to be used. I think my testimony now given agrees with what I then gave, except as to the value of the land.

To the seventh interrogatory. We were on the township four days. I think it was three or four days; and, in exploring said lots which were pointed out to me as having the most timber on them, we climbed trees, and went upon the highlands, and went among the timber in the usual way.

Cross examined.

To the first cross interrogatory. The lots which I saw were very heavily timbered, including sound and rotten timber. I mean pine timber; and I speak of the lots taken together. I don't know of any tract of pine timber of equal extent on any township that has more pine, rotten and sound, than those lots.

To the second cross interrogatory. The opinion which one would form of the lots which we examined, would depend on how much he examined them. When we first went on, we struck the north line of the town on Pine stream, and went west about half a mile, and climbed a tree on a high bluff; here we saw a large body of handsome pine tops, which looked thrifty all about us; and from the looks of the tops, and the character of the land, we supposed the timber was good; but, on going amongst the timber on the lots referred to, we found it was very rotten. Such was our opinion about it. If we had left the ground with the impression we got when we first climbed, it would have been very favorable.

To the third cross interrogatory. About twenty-six miles of the township was not examined by us; that is, none of it except the ten lots which I have before described.

B. P. GILMAN.

DISTRICT OF MAINE, *ss:*

On this tenth day of February, A. D. 1843, the aforesaid deponent

was examined, and cautioned, and sworn, agreeably to law, to the deposition aforesaid by him subscribed.

Before me, FRED. HOBBS,
Commissioner.

Interrogatories to Edmund L. Le Breton, a witness on the part of the complainant.

Interrogatory first. State your age, occupation, and residence; and the place of your residence in the year 1835. State how long you resided in Bangor, Maine, and during what years; and what was your business while there; and with whom you were associated in business in the practice of law?

2d interrogatory. State whether or no you had any interest in township No. 3, range 13, west from the east line of the State of Maine; and, if so, what was the nature thereof, when did you acquire, and from whom did you derive, the same; upon what contract did you relinquish the same, and to whom?

3d interrogatory. State whether or no George B. Moody, esq., now of Bangor, was equally interested with you in said township; whether or no he derived his interest from the same source, and at the same time; and whether he relinquished it by the same contract, and to the same persons with yourself?

4th interrogatory. State what interest William Emerson, Amos M. Roberts, Isaac Farrar, Nicholas G. Norcross, and Joseph W. Mason, all then of Bangor, had in said township in the winter and spring of 1835; and when and by what contract, if any, said Emerson, Roberts, Farrar, Norcross, and Mason, relinquished their interest in three-fourths of said township, and to whom. State how long you continued to be interested in said township in connection with the last named persons, and George B. Moody.

5th interrogatory. State whether or no the owners of said township, consisting of these defendants, George B. Moody, and yourself, did authorize William Emerson to make a sale of said township; and, if so, for what price; and whether that price was not based solely upon its value as a pine timber township; and whether it was not considered at the time, by you, by the said Moody, and by these defendants, as intrinsically worth the sum for which said Emerson was authorized to sell it; and whether you, said Moody, and the defendants, did hold it out to the public as worth that sum.

6th interrogatory. State whether or no there was ever any agreement between you, the said Moody, and these defendants, to avail yourselves of the existing excitement in the market to sell said township, and that without any reference to the quantity of pine timber thereon; and whether or no there were any instructions to that effect given to said Emerson by you, Moody, and these defendants, at the time said Emerson was so authorized, or at any time previous to the sale; or did any such agreement ever exist, to your knowledge, among these defendants; or did they ever give any such instructions to said Emerson to your

knowledge. Did either of these defendants ever say or intimate to you, at any time, while they or you were interested in said township, that they intended to avail themselves of the existing excitement in the market to sell said township without any reference to the quantity of timber thereon.

7th interrogatory. State whether or no William Emerson did not have a general discretion, as to the sale of said township, limited only as to price. State whether, by virtue of the authority reposed in him by yourself, Mr. Moody, and these defendants, he had not the power of making an absolute sale, or of giving a bond or refusal of said township, for a limited period, in the manner usual in sales of townships of land at that period.

8th interrogatory. State whether or no a refusal of this township had been given by said Emerson to John T. Goddard, of Portsmouth, which had expired, or was about to expire, at the time said Emerson gave the refusal of three-fourths thereof to John Williams, of Dover, and which expired on the eighth of June, A. D. 1835; if so, for how long a period did said Goddard have the refusal; was the same given by said Emerson, acting in behalf of yourself, Mr. Moody, and these defendants; and what consideration did Goddard pay to yourself, Moody, and these defendants, therefor.

9th interrogatory. State whether or no you, or the individuals interested with you in said township; expected that said Williams would take said township under his refusal unless he procured a company to purchase the same; and was it understood by yourself, Moody, and all the defendants, that said Williams' object in obtaining a refusal was to raise a company to purchase said township; and did you, during the period of such refusal, hear the said Emerson, and the other defendants, or some of them, and who, state that such was said Williams' object in obtaining such refusal.

10th interrogatory. State whether or no you, said Moody, and these defendants, were consulted by said Emerson, Cyrus Goss, or Hazen Mitchell, or either of them; and, if so, by whom, in reference to giving the refusal of said township to John Williams, then of Dover, N. H., before the same was given to him by said Emerson; and how long before the same was given; and for how long a time was he authorized to give such refusal; and why was the time of the refusal not to be extended beyond the eighth day of June, of that year.

11th interrogatory. If, in answer to the last interrogatory, you state that there was no consultation of the owners in reference to giving the refusal of three-fourths of said township to said Williams, then state how soon after such refusal was given to said Williams by said Emerson, it was made known to you, said Moody, and these defendants, and by whom it was so made known, and your means of knowledge that it was so made known to these defendants.

12th interrogatory. State whether or no, before the sale of three-fourths of this township to John Doggett, the complainant, and to Ichabod Bartlett, Charles W. Cutter, Edmund Rundlett, John T. Goddard,

Cyrus Goss, and John Williams, you had any knowledge of the existence of any certificates purporting to state the quantity of pine timber upon said township; if so, when were said certificates dated, and by whom were they signed? State particularly whether or no you had any knowledge, before the sale of said township, that certain certificates, signed by John Towle, Benjamin Dyer, and John Thomas, were in existence, which purported to state the quantity of pine timber upon said township. State whether or no either of these defendants ever told you, before the sale above mentioned, that they had any knowledge of the existence of such certificates so signed by Towle, Dyer, and Thomas; and, if so, what did they state to be their purport and effect?

13th interrogatory. If any such certificates, as supposed in the last interrogatory, were known to you before the sale aforesaid, state whether or no you have any knowledge that John Williams, of Dover, was authorized to use the same in the sale of the said township, and by whom was he so authorized to use them. State whether or no either of these defendants ever told you that he had authorized said Williams to use them in effecting the sale of said township.

14th interrogatory. State whether or no any meeting ever took place, having for its object a distribution of the proceeds of the sale of three-fourths of said township as aforesaid; if so, state particularly who were present at that meeting that were interested in said township. State how soon after the sale the same was held, and where it took place, and particularly who of these defendants were present. State to whom it was proposed to distribute the proceeds of said sale, and in what proportions, and of what the proceeds of said sale consisted.

15th interrogatory. If, in answer to the last interrogatory, you state that the proceeds consisted of the notes of John Doggett, this complainant, Ichabod Bartlett, Charles W. Cutter, Edmund Rundlett, John T. Goddard, Cyrus Goss, and John Williams, and if you also state that a portion of them were offered to you, to Geo. B. Moody, Nicholas G. Norcross, and Joseph W. Mason, by William Emerson, as your and their shares of the proceeds of the sale, then state whether you and said Moody, Norcross, and Mason, objected to receiving the same; if so, upon what grounds and for what reasons you and they objected to receiving the same, and particularly whether such objections had reference to the terms of the written refusal of three-fourths of said township given by said Emerson to said Williams, and by virtue of which he effected said sale.

16th interrogatory. If, in answer to the last interrogatory, you state that the objections of yourself, Moody, Norcross, and Mason had reference to the terms of the contract, then state what there was in its terms which you or either of the last named persons informed said Emerson to be objectionable, and state fully and particularly all that said Emerson said in reply to such objections, and fully and particularly all the matters in controversy which arose at that interview between said Emerson on the one hand, and yourself, Moody, Norcross, and Mason, on the other. State which of these defendants were present during said controversy,

and how the proceeds of said sale by Emerson to Williams were finally disposed of, and what you and said Moody, Norcross, and Mason received in lieu of your share thereof.

17th interrogatory. If you have mentioned, among the proceeds of said sale, the notes of Cyrus Goss and John Williams, then state what was the amount of each, and particularly what was the amount of the note or notes of John Williams, and by whom the notes of said Williams and Goss were taken, upon the final distribution of the proceeds.

18th interrogatory. If, in answer to interrogatory 15th, you state that you, Moody, Norcross, and Mason received the notes of William Emerson in lieu of that portion of the proceeds of the sale aforesaid, then state whether said Emerson received, as the consideration for his notes, that portion of the notes of Doggett, Bartlett, Rundlett, Cutter, Goss, and Williams, which would otherwise have come to you, and to said Moody, Norcross, and Mason.

Cross interrogatories to Edmund L. Le Breton.

1st. interrogatory. What did you know respecting the value of said township at the time of your purchase and sale?

2. Did not the defendants and yourself agree that said township should not be "bonded" and exposed to sale as was then usual? And had said Emerson any other authority than to sell at a sum not less than one hundred and twenty thousand dollars?

3. When did you first know that Williams had a written refusal of said township, and to whom was said township sold, as you understood it?

4. When did said Emerson first know that you *was* interested in said township?

JAMES S. ROWE,
Solicitor for defendants.

Answers to the interrogatories proposed to Edmund L. Le Breton, counsellor at law, a witness produced and examined on the part of the complainant:

To the first interrogatory he says: I am thirty-eight years old. I reside in Newburyport, and am a counsellor at law. I lived in Bangor, in Maine, in 1835. I removed there in 1834 with my family, and remained there till 1839. I was engaged there in the practice of the law, in partnership with Geo. B. Moody, esq.

To the second interrogatory he says: I was interested in the said township. My partner, Mr. Moody, and myself held an obligation from Nicholas G. Norcross and Joseph W. Mason, composing the firm of Norcross & Mason, to convey to us in equal portions one-eighth of the said township. We relinquished our contract to the said Norcross & Mason, they returning us the notes which they held, and giving us notes for the money we had paid, and for the advanced price.

To the third interrogatory he says: I have already answered this in my reply to the second interrogatory.

To the fourth interrogatory he says: William Emerson, Amos M. Roberts, Isaac Farrar, Nicholas G. Norcross, and Joseph W. Mason, all then of Bangor, purchased this township of the State, in the winter or early spring of 1835. The three persons first named had each a quarter, and Mr. Norcross and Mr. Mason had together a quarter. These gentlemen, in connection with Mr. Moody and myself, sold three-quarters of this township to a company of gentlemen in the latter part of May, or the first of June in that year. I am not certain as to the time. I think that Mr. Emerson reserved his quarter.

To the fifth interrogatory he says: The owners of the said township authorized Mr. Emerson to sell the same at a price not less than one hundred and twenty thousand dollars. I suppose this price was based on its value as a pine timber township. I supposed it to be worth that sum, but do not know what the opinions of the others were as to its value. I had no means of judging of its value except from the statements of others. I made no representations as to its value. I don't know what the others thought, but presume they thought it worth that.

To the six interrogatory he says: There was no agreement on my part, nor on the part of others, to my knowledge, to avail ourselves of the existing excitement in the market to sell the said township without reference to the quantity of pine timber thereon; and no such instructions were given to Mr. Emerson to my knowledge. No one of these defendants ever said or intimated to me, that they intended to avail themselves of the existing excitement in the market to sell the said township without reference to the quantity of timber thereon.

To the seventh interrogatory he says: Mr. Emerson had a general authority to sell, limited only as to price. I think he was not authorized to give a bond for a deed, but only to sell.

To the eighth interrogatory he says: I have an indistinct recollection that Mr. Emerson had given to somebody a refusal of the said township before Mr Williams had the refusal, but I don't remember who it was, or when the refusal expired. No consideration was paid by the said Goddard to me, nor to Mr. Moody and defendants to my knowledge.

To the ninth interrogatory he says: I supposed that Williams was acting for himself and several other gentlemen in making this purchase. I supposed that the company was already formed when he made the purchase, but did not know whether it was formed when he had the refusal. I did not suppose he would purchase for himself alone. I do not know what was understood upon this point by Messrs. Emerson, Moody, and the defendants; and do not remember to have heard them say any thing about it.

To the tenth interrogatory he says: I do not remember that Moody, the defendants, or myself, were consulted by either Emerson, Goss, or Mitchell, before the refusal was given to Mr. Williams, respecting giving it to him. We had given Mr. Emerson a general authority to effect a sale, and were anxious to have it sold immediately. As near as I remember, we wished him to sell it before the time of the great

land sale, but I do not remember whether that took place on the 8th of June or not.

To the eleventh interrogatory he says: I have no doubt that the fact of the refusal was made know to Mr. Moody, the defendant, and myself, very soon after it was given, because it was an important operation, and we naturally talked about it a good deal; but I don't recollect when or by whom we were informed, nor my means of knowledge.

To the twelfth interrogatory he says: I had no knowledge, before the said sale, of the existence of any such certificates as are herein inquired of, nor was I ever told by any of the defendants, to my recollection, that they had knowledge of any such.

To the thirteenth interrogatory he says: The answer to this interrogatory is comprehended in my answer to the twelfth interrogatory.

To the fourteenth interrogatory he says: A meeting of the persons interested in the said township took place immediately (I can't say how soon) after the sale to Williams and others, at Mr. Emerson's office, in Bangor, I think. At the early part of the meeting, Mr. Emerson, Mr. Roberts, Mr. Farrar, and myself were present, and no more I think. I left the meeting before it was over, and did not return. The object of the meeting was to hear a report from Mr. Emerson of his proceedings, and to divide the notes he had taken. He stated that he had sold three-quarters of the township, at the rate of one hundred and twenty thousand dollars for the whole, and exhibited a list of notes which he had received in payment. Before this meeting, I had supposed that the whole township was to be sold, and was surprised to learn that only three-fourths had been sold. The proceeds of the sale consisted of notes exclusively, as I remember, and I think the notes themselves were not exhibited, but only a list of them. The names of the parties to these notes were, to the best of my recollection, John Doggett, Ichabod Bartlett, Charles W. Cutter, Edmund Rundlett, John T. Goddard, Cyrus Goss, and John Williams.

To the fifteenth interrogatory he says: When it was proposed to divide the notes, I inquired of Mr. Emerson the price at which he had sold. My reason for doing this was, because I had been told by Mr. Cutter, one of the purchasers, that they had bought at the rate of six dollars and a half the acre, which would make the price more than one hundred and forty thousand dollars for the whole, and I apprehended something fraudulent or unfair, and I had assured Mr. Cutter that I would endeavor to have the matter explained. All this I stated at the meeting, and objected to any disposition of the notes till this discrepancy was explained. I said that it might make it difficult or impossible for us to collect the notes at maturity if there was any thing unfair in the transaction. Mr. Emerson said that there would be no difficulty on this score; that he was not afraid to take the notes, and that he had sold at the rate of one hundred and twenty thousand dollars, and knew nothing about any arrangement between Williams and the others. I still insisted on a further explanation, when Mr. Emerson became considerably excited, and said he did not know me in the matter. My reply

was, that I would have somebody there whom he did know. I had also stated that I had pledged my word to Mr. Cutter that I would inform him of all that transpired at this meeting, and should do so. I then left the meeting and went in search of Mr. Norcross, to whom I told what had happened, and urged him to go there and enforce my objections. He left me for the purpose of attending the meeting. Mr. Moody and Mr. Mason were not present at the meeting at all, nor was Mr. Norcross there with me. My objections had no reference to any written refusal, because I did not know of the existence of any at that time; but I was determined that, so far as could be accomplished by any efforts of mine, the transaction should not be tainted by any thing fraudulent or unfair.

To the sixteenth interrogatory he says: In my answer to the fifteenth interrogatory, I have stated the reasons why I objected to the distribution of the notes, and all of the conversation between Emerson and myself which I now remember. Mr. Roberts and Mr. Farrar were present at this conversation. At a later hour in the afternoon, Mr. Norcross came to my office, and inquired of me and of my partner, Mr. Moody, whether we would take Mr. Emerson's notes at six, twelve, and eighteen months, for the money we had already paid, and for the profits on our share of the township, receiving back the notes which Norcross and Mason held of ours. He stated that he had attended the meeting at my request, and that Mr. Emerson had proposed to obviate my and his objections by giving his notes for the money paid, and the profits to Norcross and Mason, and also to Moody and myself. We agreed to this; I stipulating, however, that I should inform Mr. Cutter of all that had transpired, as I had promised to do. Mr. Moody and I took Mr. Emerson's notes. I presume that the purchasers' notes were divided among the other parties in interest.

To the seventeenth interrogatory he says: I remember that in the list of notes exhibited by Mr. Emerson, there were three by Cyrus Goss, and three by John Williams. They were each as near as I recollect between one and two hundred dollars. I don't know by whom they were taken.

To the eighteenth interrogatory he says: I presume that Mr. Emerson received, as the consideration for his notes, that portion of the notes of Doggett and others, which would otherwise have come to me, Moody, Norcross and Mason, but I have no certain knowledge on the subject.

Answers to cross interrogatories.

To the first cross interrogatory he says: I knew nothing of my own knowledge of the value of the said township; Mr. Norcross told me it was one of the best he knew of; I relied upon the skill and experience of those who had bought of the State.

To the second cross interrogatory he says: It was agreed that the said township should not be "bonded" as I remember, and Mr. Emerson's authority was simply to sell at a price not less than one hundred and twenty thousand dollars.

To the third cross interrogatory he says: I did not know till after the sale that Williams had had a written refusal, but I can't state when I supposed it was sold to Williams, and the other persons whose notes were given. (See end of these cross interrogatories).

To the fourth cross interrogatory. I do not know when Mr. Emerson first knew of it, but it must have been very soon after I had become interested.

I never knew of my own knowledge of the existence of any written refusal from Emerson to Williams, but was subsequently told that there was one by Mr. Cutter, who also told me that it had been burned. I understand that Mr. Emerson denies that any such written refusal was ever given by him to Williams.

EDMUND L. LE BRETON.

UNITED STATES OF AMERICA,
Massachusetts, ss:

Boston, the twenty-ninth day of September, A. D. 1843; on this date personally appeared the deponent aforesaid, before me, and being by me carefully sworn to tell the truth, the whole truth, and nothing but the truth, he gave the foregoing deposition in answer to the interrogatories annexed, and subscribed the same, which was reduced to writing by me; taken at the request of John Doggett, and is to be used in an action pending between him and William Emerson and al., before the circuit court of the United States, for the district of Maine.

GEO. S. HILLARD,
Commissioner.

UNITED STATES OF AMERICA,
Maine district, ss: First circuit.

The circuit court of the United States, begun and holden at Wiscasset, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty-two.

[L. S.]

To Frederick Allen, of Gardiner, in the county of Kennebec, in said district, esquire:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the answers to the interrogatories hereunto annexed, of Drummond Farnsworth and Atwood Levenseller, witnesses to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, and William Emerson and others are defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness while present before you to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your pres-

ence; and the same so taken and subscribed to return together with this commission, and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness, the honorable Roger B. Taney, at Portland, this second day of February, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

Interrogatories to Drummond Farnsworth and Atwood Levenseller, witnesses on the part of the complainant.

1st interrogatory. State your name, age, place of residence, and occupation.

2nd. Have you any, and what, knowledge of township No. 3, in the 13th range of townships west from the east line of the State of Maine?

3d. Have you ever been on the said township, and if so, at what time or times; and why did you go there, and what did you do on the the said township, and how long did you remain there, and who went there with you?

4th. State whether or no you have made any, and what, explorations of the said township, for the purpose of ascertaining the quantity and quality of timber thereon; and if so, how long time did you spend in making such explorations, and what was your mode or manner of making them, and what was the result of such explorations; what quantity of timber did you find on the township, and what was its quality? State fully and particularly.

5th. Has any, and what, law been made by the Legislature of the State of Maine in relation to the examination of the said township, and for the appointment of commissioners to make such examination? If yea, annex a copy of the said law to your deposition.

(Objected to any parol evidence of the laws of Maine).

6th. Who were appointed commissioners, under and by virtue of the said law of Maine, to make such examination of the said township?

7th. If you, or either of you, were appointed such commissioner or commissoners, state whether you made any examination of the said land under the said law, and state all you did in relation to the said land, as such commissioner, or otherwise.

8th. Have you made any, and what, report as such commissioner? If so, annex a copy of such report to your deposition, and declare whether or no all the statements therein made are true or not.

9th. Has any timber been cut from the said township?

10th. What is the value of the said township, with the timber thereon, and what would be the value of the land without timber?

11th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your

examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. P. CHANDLER,
Solicitor for the complainant.

Received and filed January 30, A. D. 1843.

Defendant's cross interrogatories to Drummond Farnsworth and Atwood Levenseller.

1st. Is not said township very heavily timbered? Including both sound and rotten, is there not an unusually large quantity of pine upon it? Do you know any other township that has more, or even as much pine upon it?

2d. Did you, when on the township, estimate, and have you stated in your report the quantity of unsound timber?

3d. Please state, if you have not already stated, fully what amount of sound pine, and what amount of unsound, you estimated on each of the following named sections, viz: Nos. 5, 10, 11, 15, 16, 17, 21, 22, 23, 27, 28, 29, and 30.

4th. Were not your examination as thorough, and your estimate of quantity and opinion of quality as accurate, of the timber on each of the sections named in the last preceding interrogatory, as of that on the other sections?

5th. Please state your occupation and place of residence for the last twenty years; whether the manufacturing of lumber is, or has been, carried on extensively in the town in which you reside, and how extensively, and how large a portion of its inhabitants make that their constant or regular employment; whether you have been engaged in lumber operations in the woods, and when, where, how, and to what extent, and in what capacity; whether you have been in the habit of exploring timber lands, what townships you have explored, and when, and in whose employ; how many months or weeks you had spent in the woods examining timber prior to your appointment as commissioner as aforesaid; whether you have bought and sold, or been the owner of timber land, and how extensively, and of what and how large tracts.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed January 30, A. D. 1843.

I, Atwood Levenseller, of Thomaston, in the county of Lincoln, do depose and make oath, as follows:

To the first direct interrogatory I answer and say, that I am of the age of forty-three, my place of residence is said Thomaston; my occupation is that of merchandise.

To the second direct interrogatory said deponent says, that he has some knowledge of said township; that he was one of the commissioners appointed to examine the same by a resolve of this State, dated March 17th, 1842.

To the third direct interrogatory deponent answers, that he has been

on said township; that he went upon it on the 4th of September, and remained upon it till the 5th of October, 1842; that he went there in pursuance of said resolve, and explored said township in company with Drummond Farnsworth, also a commissioner; we were aided by Edwin Rose, of Thomaston, Charles N. Meservey, of Greenville, Joseph E. Spaulding, and George Farnsworth, the two latter of Norridgewock; the four last persons were selected by us, with reference to their qualifications for exploring and judging of timber; we found them well fitting for that employment, especially Mr. Rose and Mr. Meservey; we were also accompanied by Elbridge G. Moor and Samuel Sewall, of Orono. All the above named persons remained with us on said township, from the 4th of September to the 5th of October, 1842, inclusive.

To the fourth direct interrogatory deponent answers, that he did explore said township for the purpose of ascertaining the quantity and quality of timber thereon, and its present value; we employed all the time, from said 4th of September to the 5th of October, inclusive, in examining said township; we went over and across each section of said township, from one side to the other; there *was* seven of us thus employed; we endeavored to go through each section in parallel lines, at such distances from each other that they could call to each other, and occasionally see each other. In this manner the whole of said township, with the exception of those parts which were not timbered, was examined and explored; we generally carried through our exploration in parallel lines, six at a time, and each one noting the quantity of sound timber, and each one giving the result of his observations to the commissioners at the completion of each section; which, together with the results obtained by the commissioners themselves, formed the amount of each section. The quantity of sound pine timber on each township, at that time, was estimated by us to be four millions two hundred and seventeen thousand six hundred and fifty feet. By the term *sound*, I wish to be understood as meaning that portion of said timber which would be merchantable at the Bangor market. We made no attempt to keep any account of the unsound timber.

To the fifth direct interrogatory I answer, there has been a resolve passed, dated March 17th, 1842, and a copy of it is annexed to the deposition of Drummond Farnsworth.

To the sixth direct interrogatory I answer, Drummond Farnsworth and myself.

To the seventh interrogatory deponent answers, that he believes he has already stated, in his answer to the fourth interrogatory, all the facts embraced by this question.

To the eighth direct interrogatory deponent answers, we did make a report of our proceedings to the Governor and council of this State soon after we completed the business; a copy of which is annexed to the deposition of Drummond Farnsworth.

To the ninth interrogatory deponent answers, that, at the time of said exploration, there had been, in my opinion, seventy-nine thousand feet of merchantable pine timber taken from said township; I have no means of knowing how much has been taken therefrom since that time.

To the tenth direct interrogatory deponent answers, that the present value of said township, including the timber thereon, in his opinion, from a calculation made, is, as near as he can judge, nineteen thousand dollars; that the value of said township, exclusive of merchantable timber, would not exceed one thousand dollars.

To the eleventh direct interrogatory deponent answers and says, that he knows of nothing in particular not stated, which he considers material.

To the cross-interrogatories put to this deponent, he answers and says, that there is a large quantity of timber on said township; the quantity of merchantable timber I have already stated in my answer to the fourth direct interrogatory. The quantity which is not merchantable, including that portion which is sound, but is small, crooked, and knotty, and that which is rotten, is, in my opinion, equal in quantity to at least six times the amount of merchantable pine timber before stated in my answer to the fourth direct interrogatory. I have not explored any other township with a view to form a comparison with this, or for any other purpose.

To the second cross-interrogatory deponent answers, that he did not so estimate when we were on the land, nor have we stated in our report the quantity of unsound timber.

To the third cross-interrogatory I answer, that I am unable to state, with any precision, what amount of merchantable timber was found by us in the sections named in this interrogatory, not having my minutes at hand. I have seen the answer made to this interrogatory by said Farnsworth, and believe it to be correct. In making our estimate of the timber on said land, we reckoned none but such as we thought suitable for the Bangor market.

To the fourth cross-interrogatory deponent answers in the affirmative.

To the fifth cross-interrogatory deponent says, his occupation is merchandise; place of residence is Thomaston, for the last nineteen years. The manufacture of lumber is not carried on in Thomaston—none of the inhabitants of that town are engaged in lumbering; deponent has been engaged in lumbering between two *or* three years in the Province of New Brunswick, but never in this State; the time when, was a little over twenty years ago, in the parish of Northumberland; I acted as a hand in the various branches of cutting and hauling, &c., being employed by others. I have not been in the habit of exploring timber lands at any time; I have neither purchased nor sold timber lands; and further saith not this deponent.

ATWOOD LEVENSELLER.

STATE OF M[illegible]E, KENNEBEC, *ss:*

On this f[illegible]rteenth day of February, in the year eighteen hundred and forty-three, I, the undersigned, pursuant to, and by authority of, the commission hereto annexed, have caused the within named Atwood Levenseller to come before me, and while before me the said Levenseller was by me carefully examined, cautioned, and sworn, and did, in my presence, make oath to the answers herein contained to all the in-

terrogatories and cross interrogatories propounded in the annexed commission; which answers were by me reduced to writing in the presence of said Levenseller, and the same were then read to him by me, and duly signed in my presence and sworn to by him. Taken in a case in equity, pending between John Doggett, complainant, and William Emerson and others, defendants; said case is pending in the circuit court of the United States for the first circuit.

In testimony whereof, I have hereto set my hand and seal, this fourteenth day of February, 1843.

FRED'K ALLEN, [L. S.]
Commissioner.

I, Drummond Farnsworth, do testify and depose on oath:

In answer to the first direct interrogatory. That my residence is in Norridgewock, in the county of Somerset; that I am aged fifty-three years; that my occupation is that of a farmer.

To the second direct interrogatory I answer, that I have some knowledge of the township referred to, having been appointed a commissioner to examine the same by a resolve of the Legislature of the State of Maine, approved on the 17th March, 1842.

To the third direct interrogatory I answer, I have been on said township. I went upon it on the 4th day of September, 1842, and remained upon it until the 5th day of October, 1842. I went there in pursuance of said resolve named in my last answer, and explored the same in company with Atwood Levenseller, a commissioner also, and also in company of Edwin Rose, of Thomaston, Charles N. Meservey, of Greenville, Joseph E. Spaulding, and George Farnsworth, the two latter of Norridgewock, the last four named persons being employed by Mr. Levenseller, and myself; we were also accompanied by Elbridge G. Moore and Samuel Sewall, of Orono; all the aboved named persons remained with us on said township from the fourth of September to the 5th of October, 1842.

To the fourth direct interrogatory I answer, I did explore said township for the purpose of ascertaining the quantity and quality of timber thereon, and its present value; we spent all the time, from the said 4th of September to the 5th of October, inclusive, in examining said township. Our manner of making said exploration was as follows, viz., we traversed each section of said township from side to side; there were seven of us thus employed; we endeavored to go through each section in parallel lines, (each person having a pocket compass,) at such distance, the one line from the next to it, that we could hail, and occasionally see, each other. In this manner the whole of said township, (except that portion of it which was not timbered,) was explored, generally carrying through each section six parallel lines at a time, and each one noting the quantity of sound timber, and each one giving the result of his observations to the commissioner at the completion of each section; which, with the results of the observations of the commissioners themselves, who carried through two of said lines, formed the aggregate of the

amount of each section. The quantity of sound pine timber on said township, at that time, we estimated to be four million two hundred and seventeen thousand six hundred and fifty feet; by the term "sound," I mean that which was merchantable at the Bangor market. We did not attempt to ascertain the amount of unsound timber.

To the fifth direct interrogatory I answer, there has been a resolve passed, dated March 17th, 1842, and I hereto annex a copy of it.

To the sixth direct interrogatory I answer, Atwood Levenseller and myself.

To the seventh direct interrogatory I answer, that I believe I have already stated, in my answer to the 4th interrogatory, all the facts embraced by this question.

To the eighth direct interrogatory I answer, that we did make a report of our doings to the Governor and Council of this State, soon after our exploration was completed; and I annex a copy of the same to this deposition.

In answer to the ninth direct interrogatory I answer, that, at the time of said exploration, there had been, in my opinion, seventy-nine thousand feet of merchantable pine timber taken from said township. How much has been taken therefrom since that time, I have no means of knowing.

To the tenth direct interrogatory I answer, that, in my opinion, the value of said township at the present time, including the timber thereon, is eighteen thousand nine hundred and seventy-nine dollars. And, in my opinion, the value of said land, exclusive of the merchantable pine timber, would be somewhere between five and eight hundred dollars.

To the eleventh direct interrogatory I answer, that I know of nothing embraced therein not before answered, or contained in the said report annexed, unless it be the fact that the commissioners selected the four men employed by them for their superior qualifications for exploring and judging of timber, and for which we found them to be well fitted, especially Mr. Rose and Meservey.

Answers to cross interrogatories.

To the first cross interrogatory I, the said deponent, say, that there is a large quantity of timber upon said township; the quantity of merchantable timber I have already stated in answer to the fourth direct interrogatory. The quantity which is not merchantable, including both sound (viz., crooked, small, and knotty,) and rotten, is, in my opinion, equal in quantity to four times the amount of merchantable timber before stated in my answer to said fourth direct interrogatory. I have not explored any other township with a view to form a comparison with this, but I presume, from cursory observation, that there are many townships in the State that have more sound timber than this; and some where the aggregate is greater in quantity.

To the second cross interrogatory I answer, that we did not so estimate when we were on the land, nor have we stated in our report the quantity of unsound timber.

To the third cross interrogatory I answer, that we estimated the merchantable timber on the sections referred to as follows, viz., on section No. 5, forty-eight thousand one hundred and fifty feet; No. 10, one hundred forty-two thousand one hundred feet; No. 11, seven hundred thousand do.; No. 15, one hundred twenty-three thousand four hundred do.; No. 16, eighty-three thousand do.; No. 17, one hundred twenty-three thousand five hundred do.; No. 21, three hundred and forty-eight thousand one hundred do.; No. 22, one hundred seventy-one thousand four hundred do.; No. 23, forty thousand three hundred do.; No. 27, ten thousand do.; No. 28, two hundred five thousand nine hundred do.; No. 29, twenty-six thousand five hundred do.; No. 30, none. In making this estimate we did not consider all timber on said lots as merchantable which was sound; there being a great deal which was small, crooked, and knotty, and not worth the expense of transporting to market; and which, although not rotten, was not merchantable. Of the quantity not merchantable, I am unable to state more definitely than I have already done in my answer to the first cross interrogatory.

To the fourth cross interrogatory deponent answers, that he knows of no essential difference in that respect.

To the fifth cross interrogatory deponent answers and says, that his place of residence is Norridgewock, and has always been there; that his principal occupation has been that of farming; a portion of the time for the last twenty years he has been in trade, having had a store in Norridgewock. No great quantity of lumber is or has been manufactured in Norridgewock; not quite sufficient for the use of the citizens of the town. A small portion of its inhabitants are engaged in lumbering; there are generally a few teams fitted out every year for lumbering, and that has been the case for many years. All the lumber which comes down the Kennebec passes through that town. I know of no one belonging to that town who makes the business of lumbering his constant and regular employment, although there are many who have some connection with that business, some more and some less remotely. I have had teams in the woods three winters, and have been there to superintend them occasionally myself; and I have had the care of driving timber down the river two springs. I have not been in the habit of exploring timber lands. The periods when I had teams were in the years 1832, '33, and '33 and '34, and '35 and '36; the two former years I was employed on the Dead river, south branch; in the third winter I was on little Spencer stream, which empties into the Dead river. The times of driving were the springs following two of those years. I have been otherwise engaged in lumbering. I have not been engaged in buying and selling timber lands, nor have I (except in one instance) been the owner of a township.

DRUMMOND FARNSWORTH.

STATE OF MAINE, *Kennebec, ss:*

On this fourteenth day of February, in the year eighteen hundred

and forty-three, I, the undersigned, pursuant to, and by authority of, the commission hereto annexed, have caused Drummond Farnsworth, within named, to come before me; and while before me he, the said Farnsworth, was by me carefully examined, cautioned, and sworn, and did in my presence make oath to the answers herein contained, to all the interrogatories and cross interrogatories propounded in the annexed commission; which answers were by me reduced to writing in the presence of said Farnsworth, and the same were then read to him by me, and duly signed by him in my presence, and sworn to by him before me. Taken in a case in equity, pending between John Doggett, complainant, and William Emerson and others, defendants, said case pending in the circuit court of the United States for the first circuit. In testimony whereof, I have hereto set my hand and seal this fourteenth day of February, 1843.

FRED. ALLEN, [L. S.]
Commissioner.

Report of committee.

To the hon. Governor and council of the State of Maine:

The committee appointed to ascertain the present condition and valuation of township No. 3, range 13, and investigate certain proceedings of the land office, have attended to that duty, and

Report.

We employed Edwin Rose, esq., of Thomaston, Charles N. Meservey, of Greenville, and two other men, to assist in exploring the township. We left Norridgewock the 29th of August, and arrived at the township the 4th September. This township was surveyed into lots of one mile square, by Joseph L. Kelsey, esq., in 1831, and the amount of lumber found on each square put down separately, amounting in the whole, as estimated by Mr. Kelsey, to eighteen million feet merchantable pine timber. We explored each lot by itself, travelling across the same at such distance from each other as to see all the timber, noting the contents of each tree as we passed it.

We finished the exploration the fifth of October, and estimated the whole amount of merchantable pine timber on the township, at four million two hundred seventeen thousand six hundred and fifty feet. We found that seventy-nine thousand feet of pine lumber had been cut off the township since the sale to William Emerson and others, in 1835, and we estimated the stumpage at four hundred dollars. A plan of the township is hereto annexed, in which may be seen at one view the amount of timber each lot was estimated to contain by Mr. Kelsey, in 1831, and the amount found by your committee in this exploration. This township is generally level or moderately canting towards the lakes and Pine stream, with but little to obstruct the hauling of timber with facility and ease.

Some expense must be laid out on Pine stream before mill-logs can be floated over the falls and rapids, which are to be found in several

places, before it reaches the west branch of the Penobscot river. We consider eighteen thousand nine hundred and eighty-nine dollars a fair value for the township at this time. This township was sold by John Hodgdon, esq., to William Emerson and others, in 1835, for sixty-four thousand four hundred thirty-one dollars and twenty-six cents, of which twenty-one thousand four hundred seventy-seven dollars and eight cents was paid down in cash, and the balance, being forty-two thousand nine hundred fifty-four dollars and eighteen cents, was settled by three notes bearing date February 21, 1835, and payable in one, two, and three years, with interest annually, and signed by William Emerson, Isaac Farrar, Amos M. Roberts, and Mason and Norcross. A further payment was made on the 17th of March, 1836, of four thousand two hundred thirty-nine dollars and twenty-seven cents, making the amount received by the State twenty-five thousand seven hundred sixteen dollars and thirty-five cents.

An obligation was given by Mr. Hodgdon for an unconditional conveyance of the land. Matters thus stood until the fall of 1837, when the change of times, and frequent failure of business men, admonished Mr. Hodgdon to call for payment or security. William Emerson, to whom it belonged to pay the whole amount due the State, offered Mr. Hodgdon, if he would give up the notes signed by him and his associates in the purchase, to substitute his own notes of the same tenor and date of the original notes, and mortgage three-eighths of the township purchased of the State, with certain lots in the city of Bangor, and ten shares in the Bangor Pier corporation. Mr. Emerson promised, if the aforesaid security was not satisfactory to the governor and council, he would make it so. Mr. Hodgdon accepted the security thus offered, and communicated the facts to Mr. Hamlin, his successor in the land office, with a request that he would make the same known to the governor and council, and take further security if deemed necessary. Mr. Hamlin says that he did communicate the facts to the governor and council, and they were of opinion that the security accepted by Mr. Hodgdon was as good, if not better, than the security surrendered, and gave no direction in relation to it. The law of 1831, under which this township was sold, authorized the land agent to sell on a credit of four years, taking personal security or a lien on the land.

Mr. Hodgdon contends that the authority to surrender securities is incidental to the duty imposed, and mentions a case in which he saved the State five thousand dollars by an exchange of securities; I would refer to the accompanying statement of Mr. Hodgdon, for his views more at large, in explanation of this transaction.

Mr. Emerson made application for a deduction on his notes given for this township, before the commissioners appointed to settle claims between certain individuals and the State, and got a decree in his favor, ordering the land agent to deduct twenty-six fortieths of forty-two thousand nine hundred fifty-four dollars and sixteen cents, being the amount for which notes were given in this purchase, with interest on the same from the date. The deduction thus ordered amounted to

thirty-eight thousand seven hundred sixteen dollars and three cents, leaving a balance due the State for this township of sixteen thousand five hundred seventy-six dollars and twelve cents, including interest to November 21, 1842.

The State has the note of William Emerson for the sum last mentioned, secured by the lots in Bangor, and ten shares in the Bangor Pier corporation, which were estimated in 1837, when mortgaged to the State, at forty-five thousand dollars, and might now be considered good for ten thousand dollars.

The mortgage on the township before mentioned secured the payment of the two first notes, both of which were given up to Mr. Emerson in making the deduction ordered by the commissioners.

Mr. Hamlin says, that he supposed the mortgage on the township secured the payment of all the notes, and that in giving up the two first he acted in conformity to usage and well settled legal principles.

The accompanying letters of Mr. Hamlin, of the second and thirteenth of December, will explain this transaction, and the reason of making allowance for stumpage to Clay, Dinsmore and Company, and James Rogers, in 1841.

Per order. D. FARNSWORTH.

(That part of the report which relates to township No. 4. is omitted, as it in no way touches this controversy).

STATE OF MAINE:

Resolve in relation to the sale of township number three, in range thirteen.

Resolved, That Drummond Farnsworth and Atwood Levenseller be a committee to ascertain the present condition and value of township number three, in range thirteen, sold to William Emerson and others, in eighteen hundred and thirty-five, with the quantity and value of the lumber taken therefrom since the sale in eighteen hundred and thirty-five, and report the facts to the next Legislature.

Resolved, That said committee be authorized to investigate the terms and conditions of the sale of township number three, in range thirteen, to William Emerson and others, in eighteen hundred and thirty-five, and report a statement of the money paid, and securities given, for said township at the time of sale, giving the dates, names, amount, and times of payment of the original notes. And further, to ascertain and report the time, terms, conditions, and inducements of the change which was afterwards made in the securities for said township, stating what securities and names were surrendered, and what were taken in their place, with the dates, names, and times of payment, and by what authority, if any, exchange was made. And said committee are further authorized and directed to ascertain and report the reasons and inducements which led the land agent to make the aforesaid exchange.

And said committee are further authorized and directed to ascertain whether a change or surrender of securities has in any other case been made by any land agent of Maine, and report the reasons and inducements for such change or surrender. And said committee are further

authorized and directed to ascertain and report if any allowances have been made to any individuals, in deviation from any contract made between said individuals and said land agent, and the reasons and inducements which led to such allowances.

Resolved, That said committee are hereby vested with power to send for persons and papers, and to make such allowance to such persons, for time and travel, as shall be just and reasonable; and the land agent is hereby authorized to pay such allowance. And said committee shall make a report of all their doings to the governor and council, and the governor and council shall take such measure, in relation to the same, as they may deem proper.

Resolved, That the governor, with advice of council, is hereby authorized to audit the accounts of said committee, and to allow them such compensation for their services, as to them shall appear reasonable and proper. And the land agent is hereby authorized to pay said committee the amount due them, allowed as aforesaid by the governor and council.

In the House of Representatives, March 16, 1842, read and passed.

CHARLES ANDREWS, *Speaker.*

In Senate, March 16, 1842, read and passed.

S. H. BLAKE, *President.*

March 17, 1842, approved. JOHN FAIRFIELD.

STATE OF MAINE, *Secretary's office, Augusta, March* 24, 1842.

I hereby certify, that the foregoing is a true copy of the original deposited in this office.

Attest: SAMUEL L. HARRIS,
Dep'y secretary.

UNITED STATES OF AMERICA,

Maine district, ss. First circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of October, [L. S.] in the year of our Lord one thousand eight hundred and forty-three.

To John S. Abbott, of Norridgewock, in said district, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Drummond Farnsworth, a witness to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett of Boston, Massachusetts, is complainant in equity, vs. William Emerson and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and while present before you, to examine carefully on oath, touching the premises.

And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-three.

JOHN MUSSEY, *Clerk.*

Second interrogatories to D. Farnsworth, a witness on the part of the complainant.

1st. Have you or not heretofore given your deposition in the above cause; and if so, have you or not in that deposition, stated that you, as a commissioner for the State of Maine, explored township No. 3, range 13, west from the east line of the State of Maine, in the county of Piscataquis, for the purpose of ascertaining the quantity of pine timber thereon?

2nd. Have you or not in that deposition stated whether Atwood Levenseller accompanied you in such exploration; and have you or not also stated, that two men by the name of Moore and Sewall accompanied you in such exploration, or during a portion of such exploration; if so, or not, please state whether or no two men of that name accompanied you, and particularly during what portion of the time they were with you on such exploration.

3d. State where you first met them, and how long they were with you on such exploration.

4th. State whether or no they attempted any unfair means to induce you to make a low estimate of the timber on such township, to your knowledge.

5th. State whether you suspected any attempts on the part of said Moore and Sewall to influence you by any means to make a low estimate of the pine timber on said township; and if so, whether or no you were on your guard against such attempts to influence you.

6th. State whether or no you and said Levenseller made your estimates of the pine timber upon said township independently of the estimate of said Moore and Sewall, and if the same was true of your estimate of the value of said township, or otherwise.

7th. If you were at all influenced in your estimates of the amount and value of the pine timber upon said township by the efforts or estimates of said Moore and Sewall, please state how you were influenced or affected by said estimates or efforts.

8th. Did or not you and said Levenseller personally examine all the sections of said township, numbered from *one* to *thirty-six*, to ascertain the amount of pine timber on each of said sections; and did you or not

make up your judgment as to the quality of timber thereon, uninfluenced by the estimates of said Moore and Sewall; or if you were influenced by them, in what particulars were you so influenced.

9th. State fully and particularly the course you took, as well as you can now recollect, to ascertain with accuracy the quantity of pine and other timber upon said township, how long you were upon said township, and whether you went upon the same under resolves of the Legislature of the State of Maine, appointing commissioners to explore said township to ascertain the quantity of pine timber thereon, and the value of said township.

10th. If you had any instructions from the State as to the manner in which you should discharge your duties in the exploration of said township, annex the same if you can to your deposition.

11th. Were you or not under oath in the discharge of your duties in the exploration of said township?

12th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Complainant's solicitors.

Received and filed October 31, 1843, and a copy served on defendants' solicitor, November 1, 1843.

Second cross interrogatories to Drummond Farnsworth.

1. In making your exploration of said township, were not some of its sections explored by your whole party, and was it not usual in such case for the whole party to take positions on one line of the lot, equidistant or nearly so from each other, for the purpose of going through in parallel courses; if such was not the usual mode, was it not sometimes adopted? If yea, state who composed the party in such cases, (giving the names of all in each instance,) and the distance they were apart, and the number of times the party crossed the section in that manner to explore it all, and the number of the lots so explored.

2. Were not the several estimates of Moore and Sewall of the timber seen by them severally delivered, exhibited, or read to you; were not their estimates added to the estimates of the others in making up the aggregate of the timber in different sections and on the whole township; were there any other estimates made and reckoned by you of the timber examined and returned by them or either of them? If yea, by whom were such estimates made, and in how many instances; were the parts explored by them re-explored in every instance by other members of your party; were they in any instance? State all the instances, and all the instances (if any) of their estimates being rejected by the committee.

3. Who explored lots No. 34, 35, 36, 30, and 18; describe the exploration of each of said sections severally, and state the name of each

person engaged in it, the route he took, the time he occupied, and the report he made.

4. Who explored No. 6; who No. 12? State the name of each person, the point from which he started, his route, the time he occupied, and his report in each case, and the time when these explorations were made.

5. Please give as full statements relative to the explorations of Nos. 27, 29, 31, and 33, respectively, as are required in relation to Nos. 6 and 12, in the last preceding interrogatory.

6. Describe the explorations made of that part of No. 7 which lies southeast of Pine stream, of the part of No. 8 lying northwest of Pine stream, of that part of No. 9 which lies north, and of that part which lies south, of the pond, of the part of No. 17 lying north of the Carribou lake, of the part of No. 25 lying east of the Pine stream, and of that part of No. 23 which lies south of the Carribou lake, respectively; and state the name of every person employed in each exploration, the point he started from, the route he pursued, the time he occupied, and the report he made.

7. Did your committee make a report of your doings on this township to the governor and council, or any branch of the government of Maine; was that report printed by order of the Senate or any other branch of government; is the printed report a correct copy of the original?

8. Did you in that report say, "we employed Edwin Rose, esq., of Thomaston, Charles N. Meservey, of Greenville, and two other men, to assist in exploring the township? If yea, who were the two other men? Name them.

9. If in reply to the last preceding interrogatory you have named others than Spaulding and Farnsworth, state whether or no two men of those names accompanied you in the employ of the committee.

10. In the printed report aforesaid you are represented as saying, "we explored each lot by itself, travelling across the same at such distance from each other as to see all the timber, noting the contents of each tree as we passed it." Is that a correct transcript from the original report? If not, state wherein it is incorrect.

11. Whom do you mean by the term "*we*," in the last extract from your report, when you say "we explored each lot?"

12. If you have said, in answer to the last preceding interrogatory, that you mean the members of the committee only, then state whether or no you, and your fellow commissioner, have ever been in situations to "see all the timber," and "note the contents of each tree," on that township.

13. If you have said that the term "we" embraces the committee, and their four assistants, state whether you can now truly say that the persons so included in the term were in positions to "see all the timber," and "note the contents of each tree," on that township; and that the amount of timber reported by you comprises no estimates except such as were made by them of the contents of trees seen by them.

14. State the number of acres in each of the thirty-six sections of said township, according to your knowledge or belief; and then state the number of acres in each section, according to the best of your knowledgdge or belief, that you have personally explored, and noted the contents of each pine tree standing thereon.

15. Please annex a copy of so much of said report as relates to the exploration of said township, if you have not already annexed such copy to this or your former deposition.

16. Has the language or purport of any one of these interrogatories, or cross interrogatories, come to your knowledge prior to your answering all that precede it? If yea, when, how, and by whose instrumentality?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed November 10, 1843.

D. Farnsworth's second deposition in answer to interrogatories proposed by the complainant.

Answer to first interrogatory. I have heretofore given my deposition in the above named cause; and in that deposition I did state, according to my best recollection, that I, with others, explored the township mentioned in the interrogatory as a commissioner for the State of Maine, for the purpose of ascertaining the quantity of pine timber thereon.

To the second interrogatory. Atwood Levenseller did accompany me in that exploration; and two men of the name of Moore and Sewall were with us during the whole of the exploration. Whether these facts are stated in my former deposition I have no certain recollection, but think they were.

To the third interrogatory. Mr. Levenseller met with me at Norridgewock, and we were together during the whole exploration. We unexpectedly met with Moore and Sewall at Gore's, at the foot of Moose Head lake. They were with us during the whole of the exploration, being thirty days or thereabouts, upon the township, and about forty from Gore's, till we arrived at Gore's on our return.

To the fourth interrogatory. They leaned strongly in favor of a low estimate, but they did not resort to any unfair means to my knowledge.

To the fifth interrogatory. We were at first inclined to suspect them, principally because they accompanied us, till the last ten days, without pay, and were favorable to a low estimate; and, on that account, we were at first on our guard against any such attempts.

To the sixth interrogatory. We did not make our estimates of the quantity of the pine timber, nor of the value of the township, wholly independently of the estimates of said Moore and Sewall.

To the seventh interrogatory. We were influenced as follows: The township was divided into sections; all those who were engaged in exploring, being said Levenseller, Moore, Sewall, Edwin Rose, Joseph Spaulding, George Farnsworth, Charles N. Meservey, and myself, estimated the timber severally upon distinct portions, except George Farns-

worth, who was principally engaged in cooking. We would commence, for example, upon one mile section; and one be stationed at one corner of the section, and be directed to ascertain the quantity of timber upon a strip off of the side of the section, ten, fifteen, or twenty rods wide, according to the quantity of timber, and other trees upon it. Another would be directed to a similar strip, parallel with the first, and so on with all. All would start at a given signal to cross the section; the one farthest from the first stationed, marking a line, that we might know how far upon the section the exploration extended. In this manner we would cross the section; being as careful and particular as we could to omit no timber, and not to estimate any trees twice. After thus passing across the section we would all meet, and each one would make known the amount of timber as estimated upon his strip. When we thus made known our estimates, in some instances, they were cut down or diminished; Mr. Rose and Meservey thinking them too high. I had confidence in Mr. Rose in consequence of his long experience in exploring, and was much influenced by his views and opinions as to the proper mode of estimating. In determining the *value* of the pine timber, we agreed that it was worth four dollars and a-half per thousand. In coming to this conclusion Moore and Sewall expressed their opinions, but did nothing more. I would add that, during a small part of the exploration, we formed two companies; but, in such cases, each company adopted the method described above. To prevent estimating trees twice, most of the men carried axes, and marked nearly all of the trees as they were estimated.

To the eighth interrogatory. Mr. Levenseller and I did estimate and examine together, and in company with the rest of the men, nearly all of the sections. In estimating a few of the sections, two companies were formed; Mr. Levenseller being with one of them, and I with the other. The other inquiries in this interrogatory are fully answered in my answer to the seventh interrogatory.

To the ninth interrogatory. As to the course we took in estimating the pine timber, I would refer to my seventh answer. We were on the township thirty days. We arrived upon it the fourth of September, 1842, and left it the fifth of October. We went on, (that is, Mr. Levenseller and myself,) under resolves of the Legislature of Maine, as inquired.

To the tenth interrogatory. I had no other instructions than what are contained in the resolve of the Legislature of Maine for 1842, under which we acted. I have a copy of the resolves, which is hereto annexed, marked A.

To the eleventh interrogatory. I was not under oath in the discharge of the duties prescribed in the resolve.

To the twelfth interrogatory. I am not aware that I know any other facts which would be of advantage to either of the parties in this cause.

Answers to the cross interrogatories on the part of the defendants.

To the first cross interrogatory. Nearly all of the sections were explored by the whole party, excepting George Farnsworth, who was employed a part of the time as cook. The names of the men composing the party, and the particular manner of our exploration, fully appear in my answer to the seventh direct interrogatory. I cannot tell the number of times we crossed each section. The width of each strip explored, and the number of times we crossed any section, depended upon the quantity of timber and other trees upon the section.

To the second cross interrogatory. The estimates of Moore and Sewall were made known to me in manner as described in my seventh answer. They did make a part of the aggregate of the timber as estimated for the whole township. No other estimates were made of the timber examined and returned by them, or either of them. Nor were the parts explored by them re-explored in any instance.

To the third cross interrogatory. We went upon high lands and lakes in their vicinity, and ascertained that there was no timber upon either of those sections, excepting a few scattering saplings of no value; and we did not estimate any timber upon either of the sections numbered 34, 35, 36, 30, and 18.

To the fourth cross interrogatory. All of the party, excepting George Farnsworth, were engaged in exploring No. 6. Our first camp was built on No. 6, and we explored it with great care. About a third of this section is covered with water, a part of Chesemcook lake. The whole amount of timber, as estimated on this section, is four thousand and four hundred. I cannot answer the inquiries as to No. 6 more fully, excepting that the exploration was as is described in my seventh answer. No. 12 contained, according to our estimates, eight thousand feet, and the statements made as to No. 6 will apply to No. 12.

To the fifth cross interrogatory. No. 27 was explored by the whole party, excepting one employed in cooking, and George Farnsworth, before mentioned, was generally the cook. The exploration of this section, and of section numbered 29, was quite similar to that of No. 6, and I cannot give a more definite answer to this part of the interrogatory. We ascertained from an inspection of No. 31, from the lake and highlands, that there was no timber on this section. To the best of my recollection the whole party was not upon No. 33. We had ascertained that there was but little timber upon it, it being mostly a bog or very low land, and nearly half of it covered by Ragged lake. A part of the company, and I think Meservey and Moore, spent about a day upon the section, and reported six thousand. We were satisfied with the accuracy of the estimate, and adopted it.

To the sixth cross interrogatory. I have no means here of determining what part of No. 7 lies southeast of Pine stream, or whether any part of it does. The whole section was explored, according to my recollection, by the whole party, excepting the cook, and in the same manner as No. 6 was explored. We had a camp on No. 8, and explored it in

the manner we did No. 7. I have no accurate map of the township. The map of the township which we had was returned with our report, and from the imperfect sketch I have, I cannot determine the location of Pine stream, nor how much of No. 8 lies northwest of it. There was no difference made between the exploration of that part of No. 8 and the remainder of it. No. 9 was explored in the same manner as No. 8, and no difference made between the parts north and south of a small pond which is on it. We encamped upon No. 17, and the part of it lying north of Carribou lake was explored by the whole party, excepting the cook, according to my recollection, and in the manner already described. I cannot tell, having no distinct recollection, and no means here of aiding my memory, what part of No. 25 lies east of Pine stream. The whole No. was explored, as was No. 8. I think that the whole of No. 23, not covered by water, was explored by the whole party, excepting the cook, and in the same manner as No. 8; but I am not quite certain that all were engaged in exploring it. I am not able to give a more full and definite answer to the inquiries in this interrogatory.

To the seventh cross interrogatory. We made a report full and at length to the governor and council, and one more brief to the legislature. The reports were drawn by me, and examined and approved by Mr. Levenseller, but were not signed by him. The report was printed by order of the senate. The printed report does not contain the whole of the written report; but I believe it is a true copy of all that part of the report which relates to this township.

To the eighth cross interrogatory. We did state in the report as inquired. The names of the two other men are Joseph E. Spaulding and George Farnsworth, both of Norridgewock.

To the ninth cross interrogatory. No answer appears to be required in consequence of the answer to the preceding interrogatory.

To the tenth cross interrogatory. The extract quoted in this interrogatory is a correct transcript from the original report.

To the eleventh cross interrogatory. I mean the party and the names of those composing it, have been already given.

To the twelfth cross interrogatory. No answer is required, in consequence of the preceding answer.

To the thirteenth cross interrogatory. The party, or some of them, I have no doubt were in such positions as to be able "to see all the timber, and note the contents of each tree on that township;" but it is possible, and indeed quite probable, that trees were omitted. We were desirous, on the one hand, to present a full and accurate account of the timber upon the township, and the value of the same; and, on the other hand, to subject the State to as little expense as might be. In accomplishing these objects we did not spend sufficient time to render it absolutely certain that every tree was in fact seen and estimated. But I have no belief that there were any intentional omissions on the part of any of the company, nor any omissions in fact that would affect, in any

considerable degree, the general results to which we arrived. The amount of timber as reported by us did not, in my opinion, comprise any estimates, except such as were made by members of the party of the contents of trees actually seen by them.

To the fourteenth cross interrogatory. According to my best knowledge and belief, the sections contained the following numbers of acres, inclusive of water: No. 1, 640 acres; No. 2, 640 acres; No. 3, 640 acres; No. 4, 640 acres; No. 5, 640 acres; No. 6, 430 acres; Nos. 7 to 12, inclusive, contain each 640 acres; No. 13, 568 acres; Nos. 14, 15, 16, each 568 acres; No. 17, 291 acres; No. 18, 576 acres; Nos. 19, 20, 21 and 22, each 640 acres; No. 23, 496 acres; No. 24, wholly, or almost wholly, water; Nos. 25 to 29, inclusive, each 640 acres; No. 30, 368 acres; No. 31, 670 acres; No. 32, 667½ acres; No. 33, 347 acres; No. 34, 657 acres; No. 35, 651 acres; No. 36, 596 acres. We made no actual survey, and the above facts I obtain from the field notes of Joseph L. Kelsey, esq., who surveyed it in 1831. It is utterly impossible for me to answer the other branch of this question in any other way than by inference from the facts hereinbefore stated. According to my best judgment and belief, I personally explored and marked the contents of about, or a little more, than one-seventh of the whole. I so conclude, because there were seven constantly employed in exploring, and as I did not generally go upon the side lines or the sections, nor upon the check lines made by the one stationed furthest from the side lines, I could explore a strip somewhat wider than a seventh of the whole.

To the fifteenth cross interrogatory. The report inquired for is annexed to my former deposition, according to my recollection.

To the sixteenth cross interrogatory. The language or purport of none of the interrogatories or cross interrogatories did come to my knowledge prior to answering all that preceded it, excepting that the commissioner informed me last evening, when the deposition was about half completed by him, that he should wish me to bring a copy of the report, and any other papers that I might have, which would enable me to answer fully about all the sections of the township.

D. FARNSWORTH.

SOMERSET, *ss:*

On the thirtieth of November, and on the first day of December, in the year one thousand eight hundred and forty-three, the aforesaid deponent gave the foregoing deposition, having been first duly sworn; the answers were written by me, and they were taken separate and apart from all other persons, and no subsequent interrogatory was made known to the deponent until the answers to the preceding had been taken. The deposition was taken under the commission hereto annexed, and to be used in the cause therein named.

JOHN S. ABBOTT,
Commissioner and justice of the peace.

UNITED STATES OF AMERICA,
Maine district, ss:

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of
[L. S.] October, in the year of our Lord one thousand eight hundred and forty-three.

To Jeremiah Bailey, of Wiscasset, in said district, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the answers to the interrogatories hereunto annexed, of Atwood Levenseller, of Thomaston, a witness to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett, of Boston, Massachusetts, is complainant in equity, and William Emerson and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and while present before you to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence; and the same so taken and subscribed to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-three.

JOHN MUSSEY, *Clerk.*

Second interrogatories to Atwood Levenseller, a witness on the part of the complainant.

1st. Have you or not heretofore given your deposition in the above cause; and if so, have you or not in that deposition stated that you, as a commissioner for the State of Maine, explored township No. 3, range 13, west from the east line of the State of Maine, in the county of Piscataquis, for the purpose of ascertaining the quantity of pine timber thereon?

2nd. Have you or not in that deposition stated whether one Farnsworth accompanied you in such exploration; and have you or not also stated, that two men of the name of Moore and Sewall accompanied you in such exploration, or during a portion of such exploration? If so, or not, please now state whether or no two men of that name accompanied you, and during what portion of the time they were with you on such exploration.

3d. State where you first met them, and how long they were with you on such exploration?

4th. State whether or no they attempted any unfair means to induce

you to make a low estimate of the timber on such township to your knowledge.

5th. State whether you suspected any attempts on the part of said Moore and Sewall to influence you by any means to make a low estimate of the pine timber on said township; and if so, whether or no you were on your guard against such attempts to influence you.

6th. State whether or no you and said Farnsworth made your estimates of the pine timber upon said township independently of the estimates of said Moore and Sewall, and if the same was true of your estimates of the value of said township or otherwise.

7th. If you were at all influenced in your estimates of the amount and value of the pine timber upon said township by the efforts or estimates of said Moore and Sewall, please state how you were influenced or affected by these estimates and efforts of said Moore and Sewall.

8th. Did or not you and said Farnsworth personally examine all the sections of said township numbered from *one* to *thirty-six*, to ascertain the amount of pine timber on each of said sections; and did you or not make up your judgment as to the quantity of timber thereon, uninfluenced by the estimates of said Moore and Sewall, or if you were influenced by them, in what particulars were you so influenced?

9th. State fully and particularly the course you took, as well as you can now recollect, to ascertain with accuracy the quantity of pine and other timber upon said township, how long you were upon said township, and whether you went upon the same under resolves of the Legislature of the State of Maine appointing commissioners to explore said township, to ascertain the quantity of pine and other timber upon said township, and value said township.

10. If you had any instructions from the State as to the manner in which you should discharge your duties in the exploration of said township, annex the same, if you can, to your deposition.

11. Were you or not under oath in the discharge of your duties in the exploration of said township?

12. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Complainant's Solicitors.

Received and filed October 31, 1843, and copy served on defendants' solicitors November 1st.

Defendants' cross interrogatories to Atwood Levenseller.

1st. In making your exploration of said township were not some of its sections explored by your whole party; and was it not usual in such case for the whole party to take positions on one line of the lot, equidistant, or nearly so, from each other, for the purpose of going through in parallel courses? If such was not the usual mode, was it not some-

times adopted? If yea, state who composed the party in such cases, (giving the names of all in each instance,) and the distance they were apart; and the number of times the party crossed the section in that manner to explore it all; and the numbers of the lots so explored.

2d. Were not the several estimates of Moore and Sewall, of the timber seen by them, severally delivered, exhibited, or read to you? Were not their estimates added to the estimates of the others in making up the aggregate of the timber on different sections, and on the whole township? Were there any other estimates made and reckoned by you of the timber examined, and returned by them, or either of them? If yea, by whom were such estimates made, and in how many instances? Were the parts explored by them re-explored, in every instance, by other members of your party? Were they in any instance? State all the instances, and all the instances, (if any,) of their estimates being rejected by the committee.

3d. Who explored lots numbered 34, 35, 36, 30, and 18? Describe the exploration of each of said sections severally, and state the name of each person engaged in it, the route he took, the time he occupied, and the report he made.

4th. Who explored No. 6? Who No. 12? State the name of each person, the point from which he started, his route, the time he occupied, and his report in each case, and the time when these explorations were made.

5th. Please give as full statements relative to the explorations of Nos. 27, 29, 31, and 33, respectively, as are required in relation to Nos. 6 and 12, in the last preceding interrogatory.

6th. Describe the explorations made of that part of No. 7 which lies southeast of Pine stream, of the part of No. 8 lying northwest of Pine stream, of that part of No. 9 which lies north, and of that which lies south, of the pond, of the part of No. 17 lying north of the Carriboo lake, of the part of No. 25 lying east of Pine stream, and of that part of No. 23 which lies south of the Carribou lake, respectively; and state the name of every person employed in each exploration, the point he started from, the route he pursued, the time he occupied, and the report he made.

7th. Did your committee make a report of your doings in this township to the governor and council, or any branch of the Government of Maine? Was that report printed by order of the Senate, or any other branch of government? Is the printed report a correct copy of the original?

7th. Did you in that report say, "we employed Edwin Rose, esq., of Thomaston, Charles N. Meservey, of Greenville, and two other men to assist in exploring the township"? If yea, who were the "two other men?" Name them.

9th. If in reply to the last preceding interrogatory you have named others than Spaulding and Farnsworth, state whether or no two men of those names accompanied you in the employ of the committee.

10th. In the printed report aforesaid you are represented as saying,

"we explored each lot by itself, travelling across the same at such distance from each other as to see all the timber, noting the contents of each tree as we passed it." Is that a correct transcript from the original report? If not, state wherein it is incorrect.

11th. Whom do you mean by the term "*we*," in the last extract from your report, when you say "we explored each lot," &c.?

12th. If you have said, in answer to the last preceding interrogatory, that you mean the members of the committee only, then state whether or no you and your fellow-commissioner have ever been in situations to "see all the timber," and "note the contents of each tree," on that township.

13th. If you have said that the term "we" embraces the committee and their four assistants, state whether you can now truly say, that the persons so included in the term were in positions to "see all the timber," and "note the contents of each tree on that township;" and that the amount of timber reported by you comprises no estimates except such as were made by them of the contents of trees seen by them.

14th. State the number of acres in each of the thirty-six sections of said township according to your knowledge or belief, and then state the number of acres in each section according to the best of your knowledge and belief, that you have personally explored and noted the contents of each pine tree standing thereon.

15th. Please annex a copy of so much of said report as relates to the exploration of said township, if you have not already annexed such copy to this or your former deposition.

16th. Has the language or purport of any one of these interrogatories, or cross interrogatories, come to your knowledge prior to your answering all that precede it? If yea, when, how, and by whose instrumentality?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed, November 10, 1843.

Second deposition of Atwood Levenseller, a witness examined on the part of the complainant.

To the first interrogatory this deponent saith, that he has heretofore given his deposition in the above cause, and supposed that in said deposition he stated that, as a commissioner for the State of Maine, he explored township No. 3, range 13, west from the east line of the State of Maine, in the county of the Piscataquis, for the purpose of ascertaining the quantity of pine timber thereon.

To the second interrogatory this deponent saith, that not having that deposition, or a copy of it, before him, he cannot say what he did state in said deposition, but he now states that one Farnsworth accompanied him as an associate commissioner; and that two men, by the name of Moore and Sewall, also accompanied us during the whole of said exploration.

To the third interrogatory this deponent saith, that he first met them

(Moore and Sewall) in Greenville, at the foot of Moosehead lake; they were with us during the whole of said exploration, and returned with us to Greenville, which took about thirty-eight days.

To the fourth interrogatory this deponent saith, that they did not, to his knowledge.

To the fifth interrogatory this deponent saith, that when we first met Moore and Sewall at the foot of Moosehead lake, they stated to us that they were going on to township No. 3, range 13, to explore on their own account, and find a place for cutting timber; they wished to go with us, and wished us to employ them. This deponent then questioned them, and asked them whether or not they were not employed by some one interested in the township to go there with us for their own purpose, or to subserve the interest of said owners; they answered that they were employed for no one, but were going on their own account. This deponent answered and said, that he suspected them, and should not hire them, but consented to their accompanying us, they having supplies of provisions, &c., for themselves. They went with us, and encamped with us on the township, and accompanied and assisted us in the exploration. During the first part of said exploration, this deponent watched them closely, to see if he had just cause to suspect them of any thing wrong; but he saw nothing in their conduct of a suspicious character.

To the sixth interrogatory this deponent saith, that our estimates were not made independent of said Moore and Sewall.

To the seventh interrogatory this deponent saith, that we were influenced by the estimates of said Moore and Sewall, as to the amount of pine timber upon said township, because they assisted us in ascertaining said amount.

To the eighth interrogatory this deponent saith, that there were two or three sections that he and said Farnsworth did not personally go upon, but sent on a part of our men. We were influenced by the estimates of said Moore and Sewall in the following manner, they estimated the quantity of timber in those trees that fell within their observation, and we added their estimates to ours.

To the ninth interrogatory this deponent saith, that we explored it by sections; the party taking positions on one line of the section, nearly equidistant from each other, and crossing said section in parallel courses, each individual estimating the pine trees that fell under his observation; that is, estimating the merchantable timber only. We were upon the township about thirty days, and went upon the same under resolves of the Legislature of the State of Maine, as inquired of in this ninth interrogatory.

To the tenth interrogatory this deponent saith, that he recollects of no instructions from the State, excepting what were contained in the resolves mentioned in the answer to the ninth interrogatory.

To the eleventh interrogatory this deponent saith, that he was not under oath.

To the twelfth interrogatory this deponent saith, that he does not

know of any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this deponent's examination, or the matter in question in this cause.

Cross examined on the part of the defendants.

To the first cross interrogatory this deponent saith, that in making the exploration of said township the most of its sections were explored by our whole party, except one who remained in camp to cook. It was usual in such case for the whole party to take positions on one line of the lot, equi-distant, or nearly so, from each other, for the purpose of going through in parallel courses. The party in such cases was composed of Drummond Farnsworth, Edwin Rose, Charles N. Meservey, Moore, Sewall, and a young man by the name of Farnsworth, a part of the time, and another young man whose name this deponent does not now recollect, who cooked alternately with the said young Farnsworth, and also myself. We were from ten to twenty rods apart, and crossed each section so explored from four to six times. This deponent does not recollect the number of lots so explored, but a majority of them were so explored.

To the second cross interrogatory this deponent saith, that the several estimates of Moore and Sewall of the timber seen by them were exhibited and read to us, and their estimates were added to the estimates of others in making up the aggregate of the timber on the different sections, and on the whole township; and this deponent recollects no other estimates being made by us of the timber returned by either of them. The parts explored by them were not, in any instance, (in the recollection of this deponent,) re-explored by any member of our party; neither does this deponent recollect of their estimates being rejected in any instance by the committee.

To the third cross interrogatory this deponent saith, that he does not recollect about the exploration of the sections mentioned in this third cross interrogatory, further than that they were not so fully explored as other sections in the township.

To the fourth cross interrogatory this deponent saith, that Nos. 6 and 12 (he thinks) were explored by D. Farnsworth, C. Rose, Meservey, and himself; but does not recollect the point from which each person started, nor their report in each case, but thinks said sections were explored on the 6th and 7th days of September, 1842.

To the fifth cross interrogatory this deponent saith, that he cannot give as full statements relative to the exploration of numbers 27, 29, 31 and 33, respectively, as are required in relation to No. 6 and 12, because he cannot recollect the particulars as requested by this interrogatory.

To the sixth cross interrogatory this deponent saith, that it is impossible for him to answer questions in this sixth cross interrogatory, having no plan of the township, no minutes, or recollection of the name of every

person employed in each exploration, the point he started from, the route he pursued, the time he occupied, or the report he made.

To the seventh cross interrogatory this deponent saith, that our committee did make a report of our doings in the township to the governor and council, or some branch of the government of Maine; the report was printed by order of the senate, or some branch of the government. If a printed report is attached to this deponent's former deposition, it is a correct copy of the original; if not, he cannot say.

To the eighth cross interrogatory this deponent saith, that he thinks we did in that report say, we employed Edwin Rose, esq., of Thomaston, Charles H. Meservey, of Greenville, and two other men, to assist in exploring the township; those two other men were Farnsworth and Spaulding.

To the ninth cross interrogatory this deponent saith, that he considers it already answered in the last preceding answer.

To the tenth cross interrogatory this deponent saith, that, not having the original or printed report now before him, he cannot say whether it is, or not, a correct transcript from the original report.

To the eleventh cross interrogatory this deponent saith, that, if we made use of the word "we," as quoted in said extract, he supposes that the whole party engaged in exploring were meant.

To the twelfth cross interrogatory this deponent saith, that he considers this interrogatory already answered in the last preceding answer.

To the thirteenth cross interrogatory this deponent saith, that he considers this interrogatory fully answered and explained in his answers to the first and second cross interrogatories in this deposition.

To the fourteenth cross interrogatory this deponent saith, that, not having a plan of the township before him, it will be impossible for him to state, with any degree of accuracy, the number of acres in each of the thirty-six sections of said township, there being large bodies of water in said township, and some of the sections nearly covered with water; neither could the deponent possibly even guess, with any degree of accuracy, at the number of acres personally explored by himself.

To the fifteenth cross interrogatory this deponent saith, that he has not either the original or a copy of said report in his possession, but believes a copy was annexed to his former deposition.

To the sixteenth cross interrogatory this deponent saith, that the language or purport of any one of these interrogatories, or cross interrogatories, has not come to his knowledge prior to his commencing these his answers to said interrogatories and cross interrogatories.

ATWOOD LEVENSELLER.

In pursuance of the commission hereto annexed, I, the subscriber therein named, have caused the aforesaid Atwood Levenseller to come before me, at my office in Wiscasset, on the twenty-third day of November, in the year eighteen hundred and forty-three, and on the twenty-fourth day of the same November, by adjournment, and while present before me, the said Atwood Levenseller was by me carefully examined

and sworn, according to law, to the truth of the foregoing answers by him made to the interrogatories and cross interrogatories aforesaid; all of which answers were by me taken and reduced to writing on seven pages of paper hereto annexed, and subscribed by the said witness in my presence, and by him sworn to before me.

JEREMIAH BAILEY,
Commissioner.

UNITED STATES OF AMERICA,
Maine district, ss: First circuit.

The circuit court of the United States, begun and holden at Portland, within and for Maine district, on the first day of [L. S.] October, in the year of our Lord one thousand eight hundred and forty-three.

To Frederick Hobbs, of Bangor, in said district, esquire.

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of William Howard, of Milford, Daniel Davis, of Oldtown, and William Coburn, of Orono, witnesses to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett, of Boston, Massachusetts, is complainant in equity, vs. William Emerson and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-three.

JOHN MUSSEY, *Clerk.*

UNITED STATES, *District of Maine, ss:*

Pursuant to the within commission to me directed, I appointed the thirtieth day of December, A. D. 1843, for taking the testimony of the witnesses therein named, and caused them to be brought before me for that purpose, and each witness while present before me, and apart from all other persons, was carefully examined by me on oath, touching the premises; and the testimony of each witness was reduced to writing by me, and by each witness subscribed in my presence. The execution of this commission therefore appears in the depositions of William How-

ard, of Milford, Daniel Davis, of Oldtown, and Wm. Coburn, jun'r, of Orono, hereunto annexed, and are herewith returned with my doings, under seal, to the circuit court of the United States for said district of Maine, next to be holden at Portland, within and for said district, on the first day of May next.

Witness my hand, this first day of January, A. D. 1844.

FRED. HOBBS,
Commissioner.

Interrogatories to William Howard, a witness on the part of the complainant.

1st. State your age, occupation, and place of residence, and whether or no you know the parties, complainant and respondent, named in the title to these interrogatories.

2d. State whether or no, at the request of some of the respondents, or at the request of Hezekiah Winslow and Reuben Ordway, of Bangor, or at the request of Aaron Babb, or at whose request, you did sometime last spring, at or near the Penobscot boom, on the Penobscot river, scale a portion of the logs cut by said Babb, and Cummings, and Davis, on township No. 3, range 13, west from the east line of the State of Maine, in the county of Piscataquis, during the lumbering season of 1842–'3. If so, for whom did you scale them, and when; and were they sold by *your scale;* and, if so, to whom?

3d. State what were the marks on said logs, and how many in number were scaled by you, and what was the *average* quantity board measure of such logs, and what was the aggregate quantity board measure of *all the logs* so scaled by you?

4th. State whether or no you have been a scaler for the States of Maine and Massachusetts some years past; and if so, how long, and during what years; if yea, has or not your employment been that of scaling logs cut on lands in Maine belonging to those States under permit from said States to individuals where stumpage had been sold by the State, or otherwise?

5th. Do or not those States receive pay for stumpage according to the amount board measure ascertained by your scale; and is or not that scale always made by you on the lands where the logs are cut, or how otherwise?

6th. State whether or no where you have scaled logs for those States, on the land where cut, the same logs when they have been run to market and rescaled for the purpose of sale, have usually equalled and generally somewhat exceeded in amount board measure, upon such rescale, the quantity board measure as ascertained by your scale on the lands where cut?

7th. Have you or not been in the habit for many years past of scaling logs on the townships where the same were cut for individuals who were owners of such townships on the Penobscot waters, with a view of ascertaining the amount of stumpage due from the operators under permits to the owners of such townships? If so, has the quantity in

board measure, as ascertained by you upon the scale of such logs on the township, usually held out upon a rescale of the same logs for the purposes of sale when they were driven to market?

8th. Do or not scalers in the woods intend to be fair towards the operators, and so to scale logs in the woods as to be sure that the quantity as ascertained by the scale of logs in the woods will hold good upon a rescale of the same logs, for purposes of sale, when driven to market?

9th. If a fair and proper scale of logs has been made in the woods, will or not the quantity in board measure, as ascertained by such scale, hold out upon a rescale of the same logs for purposes of sale after they are driven to market?

10th. When a quantity of logs cut upon a township during one logging season are put into the stream to be run down the west branch of the Penobscot river, is it not usual for a part to remain behind and not come down the first season; and when, of the same lot of logs thus cut during a winter operation, part comes to market and part remain behind, is or not the average of those that remain about the same as the average of those that come to market?

11th. In scaling the logs referred to in interrogatory second, did you or not adopt the mode usual among good scalers to ascertain the contents of said logs?

12th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Complainant's Solicitors.

Received and filed October 31, 1843, and a copy served on defendants' solicitors November 1st.

Defendants' cross interrogatories to William Howard, William Coburn, jr., and Daniel Davis.

1st. In scaling logs from seller to purchaser, does the quantity returned by you show the actual contents of the logs, or the number of feet which you estimate it will make of boards when manufactured according to the Bangor survey?

2d. Does not the survey at Bangor vary from time to time? Has it not been for the last two years more liberal to the purchaser than formerly? Have you not endeavored to make your survey correspond with it? Has not your survey latterly been more liberal to the purchaser than formerly? Do you not make a more liberal allowance for defects?

3d. Does it not usually happen, that in driving logs a great distance some of them float into shoal water on the shores, bars, rocks, and ledges, and lodge there? And is not that the case with most of the logs which are left in such drives? Are they not the larger logs which are

the first to ground, or lodge, and the last to be removed? And are not those left behind usually of this class?

JAS. S. ROWE,
Defendants' Solicitor.

Received and filed, November 10, 1843.

William Howard, a witness produced, sworn, and examined on behalf of the complainant, in answer to his interrogatories, says:

1. I am forty-one years old; my principal business for ten years past has been scaling logs; I reside at Milford; I don't know the complainant, Mr. Doggett; I do know the defendants.

2. On the 7th of July, 1843, at the request of Winslow and Ordway, of Bangor, I scaled a quantity of logs called the Babb logs; I don't know where they were cut, and I presume they were sold to Winslow and Ordway. The entry in my book is, "Scaled from Emerson, Farrar, Roberts, and Jones, to Winslow and Ordway;" which entry was made in that form by request of Hazen Mitchell. I don't know whether they were sold by my scale or not; I, on the 13th July, by request of Amos Davis, I scaled three hundred and thirteen logs, called the Cummings logs. (Both lots were within two miles of Penobscot boom, and below it.) They were scaled for George W. Pickering, to whom I presume they were sold by my scale; I don't know where they were cut.

3. The marks on said logs were | BX and C | D. The whole number of logs of both marks scaled by me was twenty-two hundred and forty-five logs. Two hundred and eighty-nine of said C | D were afterwards rescaled by Colburn, and sold by his scale, I presume, as the scaling was not settled for with me by Pickering. I make the average per log of the whole quantity, to wit, 2245 logs, to be four hundred seventy-five feet 270—2245. The C | D averaged about four hundred and ninety-four feet; the girdle B cross, four hundred and fifty-eight feet board measure, scoots out. The aggregate quantity board measure, scoots out, of all the logs scaled by me was ten hundred sixty-six thousand six hundred and fifty feet. The two hundred and eighty-nine logs rescaled by Colburn contained, according to my scale, one hundred thirty-nine thousand seven hundred and seven feet, board measure, scoots out.

4. I have been a scaler for Maine and Massachusetts for some years past; about thirteen years, coming in 1830. As a general thing, it has been my employment to scale logs cut on lands belonging to those States, but under permits from said States to individuals, where stumpage has been sold by the States.

5. Those States do receive pay for stumpage, according to the amount board measure, scoots out, as ascertained by my scale; and that scale is made by me on the lands where those logs are cut, generally. There may be one case in a hundred where it is otherwise.

6. As a general thing, said logs have equalled or overrun, on a rescale

for sale, my scale in the woods. I believe I never had but one lot fall short.

7. There have been but few cases where I have scaled for individuals under permits from proprietors. I have generally been employed by the States of Maine and Massachusetts. The same scale has been used by me for individuals as the States, and have held out on a rescale for the purpose of being sold when driven to market.

8. I can only answer for myself. I so scale in the woods that the lumber when manufactured will make the quantity scaled free of scoots.

9. If logs are once fairly scaled, and again rescaled properly, they will hold out in quantity for whatever purpose they may be so rescaled.

10. I never was on the west branch of Penobscot river, and know nothing about it. Sometimes it is the case that logs are not all got into boom the first season. Logs will not scale so much which lay over as they will when first cut. They shrink, and, the bark coming off, the defects are more easily discovered; consequently they scale less in quantity.

11. Yes; we have but one rule of scaling; and I adopted the rule of good scalers in scaling those logs.

12. I can state nothing more, but would add, as part of my answer to the second interrogatory, that I scaled to Pickering three lots of logs. One lot on the thirteenth of July, 1841, of three hundred and thirteen, as before stated. On the fourteenth July, 1843, I scaled one hundred and fifty-five logs; and on the 15th July, I scaled one hundred and seventy-two logs; making in all scaled for Pickering six hundred and forty logs; making three hundred and fifteen thousand eight hundred and eighty feet. These were all of the C | D mark. The whole amount of logs scaled for Winslow and Ordway, of the | B X mark, was eleven hundred and sixty-two logs, scaling five hundred and thirty-two thousand five hundred and ninety feet. I also scaled to them one hundred and fifty-four logs of the C | D mark, scaling seventy-eight thousand four hundred and ten feet.

WILLIAM HOWARD.

Cross examined.

1st cross. In scaling logs from seller to buyer, it is calculated that the quantity returned shall show the actual contents of the logs when manufactured, exclusive of the scoots; but no regard is had to the Bangor survey, except so far as to ascertain the quantity of scoots which that survey throws out.

2d cross. I cannot say whether the Bangor survey varies from time to time. It has not been more liberal to the purchaser for the last two years to my knowledge. I have not endeavored to make my survey correspond with the Bangor survey, except so far as the scoots are concerned. My survey has not been more liberal to the purchaser than formerly, unless it be that I did not, six or eight years ago, pay any regard to scaling free of scoots; but now, it is understood by buyer and

seller that the scoots are to be out. I do not make a more liberal allowance for defects than formerly.

3d cross. I should think it likely it was the case, that, in driving logs a great distance, some of them float out upon the shores, and bars, and shoals, and lodge there. Those that so float out are often left behind. The larger logs are generally left, if any, when they ground, and are the last to be removed by the water, or the men who drive them. It is generally calculated that if any of the logs are left for want of sufficient freshet, they are among the largest logs.

WILLIAM HOWARD.

DISTRICT OF MAINE, *ss:* *Dec.* 30, 1843.

Subscribed and sworn, before me,

FRED. HOBBS,
Commissioner.

Interrogatories to Daniel Davis, a witness on the part of the complainant.

1st. State your age, occupation, and place of residence; and whether or no you know the parties, complainant and respondents, named in the title to the interrogatories.

2d. State whether or no you did, at the Penobscot boom, on the Penobscot river, as boom-scaler, scale a portion of the logs cut by Babb, Cummings, Davis, and Douglass, on township No. 3, range 13, west from the east line of the State of Maine, in the county of Piscataquis, during the lumbering season of 1842–'3. If so, for what purpose did you scale them, and when; and was it or not to ascertain the amount of toll due to the Penobscot Boom Corporation for rafting and running said logs through the boom?

3d. Were any of said logs sold by your scale; if so, to whom, and when; and at whose request did you scale them for sale, and by whom were they sold?

4th. State whether or no you are the boom-scaler for the Penobscot Boom Corporation; how long have you been so; what is your business as such scaler; and for what purpose you scale logs at the boom?

5th. State how your scale of logs at the boom, as to the quantity thereof in board measure, usually compares with the scale of the same logs made in the woods; and also with the scale of the same logs made after they are rafted out of the boom for the purpose of sale of such logs?

6th. Have you or not been in the habit, for many years past, of scaling logs on the townships where the same were cut for individuals who were owners of such townships on the Penobscot waters, with a view of ascertaining the amount of stumpage due from the operates under permits to the owners of such townships? If so, has the quantity, in board measure, as ascertained by you upon the scale of such logs on the townships, usually held out upon a rescale of the same logs for the purpose of sale, when they were driven to market, and at a rescale of the same at the boom?

7th. Do or not scalers in the woods intend to be fair towards the operates, and so to scale logs in the woods as to be sure that the quantity, as ascertained by the scale of logs in the woods, will hold good upon a rescale of the same logs, for the purpose of sale, when they are driven to market?

8th. If a fair and proper scale of logs has been made in the woods, will or not the quantity in board measure, as ascertained by such scale, hold out upon a rescale of the same logs, for the purposes of sale after they are driven to market?

9th. When a quantity of logs cut upon a township during one logging season are put into the stream to be run down the first branch of the Penobscot river, is it not usual for a part to remain behind and not come down the first season? And when, of the same lot of logs thus cut during one winter's operation, part come to market, and part remain behind, is or not the average of those that then remain about the same as the average of those that come to market?

10th. How long have you been the scaler at the Penobscot boom?

11th. State what were the marks on the logs mentioned in the second of these interrogatories which were scaled by you, if any were so scaled by you; and how many in number were scaled by you; and what were the *average* quantity board measure of such logs; and what was the aggregate quantity board measure of *all the logs* so scaled by you.

12th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLY & ASPINWALL,
Complainant's solicitors.

Received and filed, October 31, 1843, and a copy served on defendants' solicitors, November 1st, 1843.

Daniel Davis, a witness produced, sworn, and examined on behalf of the complainant to his interrogatories, answers as follows:

1. I am fifty-three years old; reside at Oldtown. I generally follow scaling logs in the woods in winter, and work on log scaling at the boom in the summer. I do not know the complainant, but I do know the defendants.

2. In July, 1843, as boom scaler at Penobscot boom, I did scale a portion of logs called the Babb logs, cut in 1842–'3, but I don't know where. I scaled them for the boomage due the Penobscot boom, for rafting and running said logs through said boom.

3. Some of said logs were sold by my scale to Winslow & Ordway on July 15, 1843; they were scaled at Pea cove, a mile and a half from the boom. I scaled them at the request of Hazen Mitchell, by whose direction I entered them on my scale book "from Farrar, Emerson, Roberts, and Jones, to Winslow and Ordway." I don't know by whom they were sold.

4. I was at that time one of the boom scalers of the Penobscot Boom Corporation. I have scaled there for the last five or six years, except one year. To measure the logs at the boom and get the contents of them is the business of a boom scaler. I scaled logs at the boom to get the contents and ascertain the amount of toll for rafting through the boom.

5. The boom scale on a good lot of logs is generally the same as the scale in the woods. Such logs as the | B X's would not hold out with the boom scale, as more deduction is made on account of scoots, when rafted out of the boom and rescaled for sale.

6. I have been in the habit of scaling logs in the woods, as enquired about, for eighteen or twenty years past. I cannot say whether my woods scale would hold out with a rescale for the sale of said logs at the market, but they have held out with the boom scale.

7. It has always been my course to make a fair scale in the woods towards all parties, and so to scale them there that they will hold out free from scoots when rescaled for any purpose.

8. I should think that a fair scale in the woods would hold out on a rescale of the same logs for sale, if as fairly made.

9. It is usual for a part of the logs to lay back the first season on the west branch of the Penobscot river. It is usually the case that the best logs remain behind, better than an average of those that come down the first season.

10. I have been scaler at the Penobscot boom five or six years, with the exception of one year.

11. I scaled marks of the C | D and ⊦ B X at that time. I cannot state the number so scaled by me. I don't recollect the quantity board measure, nor the average per log; nor can I tell the whole quantity scaled then by me of those marks. The account was kept by the clerk of the boom, and the quantities are entered on the boom books. The number of logs so rescaled by me at Mitchell's request was eight hundred and ninety-four.

12. I don't now think of any thing further that would be material.

Cross examined.

1st cross. In scaling logs from seller to buyer, the quantity returned by the scaler does not show the actual contents of the logs, because they are scaled with scoots out. The Bangor survey has nothing to do with scaling, except as to scoots which are hove out by the surveyor of lumber when manufactured. When I scale a log, I ascertain how many Nos. 1, 2, 3, and 4, it will make.

2d cross. I think the Bangor survey, so far as I am acquainted with it, does vary from time to time. I cannot say whether it has or not been more liberal to the purchaser for the last two years. I calculate to make my scale hold out with the Bangor survey, the different numbers. I could not say that my survey has been more liberal to the purchaser than formerly. I am not conscious of having made more liberal allowance for defects, but lumber is more defective than it used to be.

3d cross. In driving logs a great distance they lodge in bad places, where they can't get them out at the time of driving, and they remain behind till there is a different pitch of water. They generally roll them in when the water is low, and the next spring drive them down. Generally the larger logs are the first to ground; not always the last to be removed, but sometimes and usually the last, and are of the best class of logs.

DANIEL DAVIS.

DISTRICT OF MAINE, *ss:* *Dec.* 30, 1843.

Subscribed and sworn before me,

FRED. HOBBS, *Commissioner.*

Interrogatories to William Colburn, jr., a witness on the part of the complainant.

1st. State your age, occupation, and place of residence; and whether or no you know the parties, complainant and respondents, named in the title to the interrogatories?

2d. State how long you have been a scaler on the Penobscot river?

3d. State whether or no you did, at or near the Penobscot boom, on the Penobscot river, scale a portion of the logs cut by Babb, Cummings, and Davis, and Douglass, on township No. 3, range 13, west from the east line of the State of Maine, in the county of Piscataquis, during the lumbering season of 1842–'3; if so, for what purpose did you scale them, and when?

4th. Were any of said logs sold by your scale; if so, to whom and when? And at whose request did you scale them for sale, and by whom were they sold? State whether or no you are the boom scaler for the Penobscot Boom Corporation; how long you have been so; what is your business as such scaler; and for what purposes you scale logs at the boom.

5th. Have you or not been in the habit, for many years past, of scaling logs on the townships where the same were cut for individuals who were owners of such townships on the Penobscot waters, with a view of ascertaining the amount of stumpage due from the operates under permits to the owner of such townships? If so, has the quantity in board measure, as ascertained by you upon the scale of such logs on the township, usually held out upon a rescale of the same logs for the purpose of sale when they were driven to market, and at a rescale of the same at the boom?

6th. Do or not scalers in the woods intend to be fair towards the operates, and so to scale logs in the woods as to be sure that the quantity, as ascertained by the scale of logs in the woods, will hold good upon rescale of the same logs for the purpose of sale, when driven to market?

7th. If a fair and proper scale of logs has been made in the woods, will or not the quantity in board measure, as ascertained by such scale, hold out upon a rescale of the same logs for purposes of sale after they are driven to market?

8th. When a quantity of logs cut upon a township during one logging season are put into the stream to be run down the first branch of the Penobscot river, is it or not usual for a part to remain behind and not come down the first season; and when, of the same lot of logs thus cut during one winter's operations, part come to market and part remain behind, is or not the average of those that remain about the same as the average of those that come to market?

9th. State what were the marks on the logs mentioned in the second of these interrogatories which were scaled by you, if any were so scaled by you; and how many in numbers were scaled by you, and what were the *average* quantity, board measure, of such logs, and what was the aggregate quantity, board measure, of *all the logs* so scaled by you?

10th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Complainant's Solicitors.

Received and filed, October 31, 1843, and a copy served on defendants' solicitors, Nov. 1, 1843.

William Colburn, jr., a witness produced, sworn, and examined on behalf of the complainant to his interrogatories, answers as follows:

1st. I shall be fifty-four years of age next February. My occupation is principally farming. I am occasionally employed to scale logs. I have a slight acquaintance with John Doggett, but have not seen him since 1835. I know the defendants. I reside in Orono.

2d. I have scaled logs on the Penobscot river more or less ever since 1825.

3d. I did scale six hundred and eighty-four logs marked C | D, near or about two miles below the Penobscot boom, at various times, on the 8th and 28th of July, 1843, for the purpose of ascertaining the quantity of them between the seller and the purchaser. I also, on the 3d and 4th of July, 1843, scaled two hundred and three logs, said to have been cut by Moses and Aaron Babb on No. 3, R. 13, in winter of 1842–'3. They were in Stillwater stream, about seven miles below said boom. I scaled them for the same purpose.

4th. Said logs were sold by my scale. The first lot were sold to Geo. W. Pickering and Amos Davis, in July, 1843, I think. The second lot was sold to Winslow and Ordway in the same month, I think. I was called on to scale the first lot by Amos Davis and Hazen Mitchell. Mitchell claimed to act for Messrs. Emerson, Farrar, Roberts, and Leonard Jones. They were sold, I think, by Mitchell, as agent to Pickering and Davis. I was called on by Mitchell and Aaron Babb to scale the second lot. Babb acted for Winslow and Ordway, the purchasers. I never was scaler for Penobscot boom, and cannot speak of the business.

5th. I have not been in the habit of late of scaling logs on townships where they were cut for proprietors, and cannot answer.

6th. I cannot answer this question, as I have not been employed in that business.

7th. I should think, if they were fairly scaled in the woods they would hold out on a rescale for purposes of sale.

8th. I know nothing about it.

9th. The marks on the logs scaled by me, as before stated, were C | D and | B X. Six hundred and eighty-four of the first mark, and two hundred and three of the second. The average quantity of the first lot was four hundred sixty-four feet $\frac{3}{6}\frac{3}{8}\frac{4}{4}$. The average quantity of the second lot was three hundred sixty-five $\frac{5}{2}\frac{7}{0}\frac{}{3}$ feet, board measure. The aggregate quantity of the first lot was three hundred seventeen thousand seven hundred feet, board measure. The aggregate quantity of the second lot was seventy-four thousand one hundred and fifty-two feet, (74,152) board measure. The whole was 391,852 feet.

10th. I can state nothing further.

Cross examination.

1st cross. In scaling logs from seller to purchaser, it is intended that the scale shall ascertain the actual contents of the logs, scoots out, so as to meet the Bangor survey of boards when manufactured.

2d cross. I cannot speak of the Bangor survey. I have had no regard in my scaling to the Bangor survey, only to throw out the scoots. My scale has not latterly been more liberal to purchasers than formerly. I do not make a more liberal allowance for defects.

3d cross. I am not acquainted with driving logs, and cannot answer from my own observation.

WILLIAM COLBURN, Jr.

District of Maine, *ss:*

December 30, 1843. Subscribed and sworn before me,
FRED. HOBBS, *Commissioner.*

United States of America,
Southern district of New York, city, county, and State of New York.

Be it remembered, that on this fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, I, James W. Metcalf, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed 20th February, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause

to be and personally appear before me, at my office, at number seventy-five, Nassau street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Williams, to testify, and the truth to say, on the part and behalf of the complainant, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States, for the district of Maine, in equity, at , wherein John Doggett is complainant, and William Emerson and others are defendants. And the said John Williams being of full age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Williams, and he did thereupon depose, testify, and say, as follows, viz:

I reside in Brooklyn, in the State of New York. I know all the parties to this suit. During the year 1835, I resided at Dover, in the State of New Hampshire.

Question. Did you make any, and what arrangement, and at what time, for the selling of the township known as number three, in the thirteenth range of townships west from the east line of the State of Maine?

Answer. I arrived in Bangor on the 18th day of May, 1835, and soon met Colonel Goss with whom my business was. This business was independent of these matters. Colonel Goss mentioned township number three to me favorably. It was arranged that Colonel Goss, Hazen Mitchell, and myself, would procure a bond, giving us the refusal of it for a certain time, in order that we might sell it within that time, if possible, and divide the profits between us. The bond was to be taken in my name alone. I then wrote a note to William Emerson, and received an answer. The annexed papers, marked A and B, are true copies of this note and answer, I sent the note to Mr. Emerson late in the evening, and received the answer early the next morning. Colonel Goss took the note to Mr. Emerson; the actual agreement between Mr. Emerson and myself was different from that mentioned in his answer to me. We were not to pay him six dollars and a half per acre; but in case we succeeded in selling the land, we were to settle with him at the rate of one hundred and twenty thousand dollars for the whole township; that is to say, ninety thousand dollars for the three quarters which he was willing to sell. In case we did not succeed in selling it by the 8th of June, we had no intention of buying it on our own account. In reference to Mr. Emerson's authority to give this bond, I was informed by Mr. Goss, and also by Mr. Emerson himself, that he had authority from all the other owners. I saw Mr. Amos M. Roberts before the expiration of the time limited in the bond, we being fellow passengers on board the boat from Portland to Bangor, and he made no objection to Emerson's authority to give the bond, but rather expressed his regret that I had the township under my control; he also spoke of it as an uncommonly fine township. Without doubt, also, he knew, that I had the exploring papers which gave the character of

the township. These papers were given to me by Mr. Goss or Mr. Mitchell, and I have no doubt it was done with the united consent of the owners. I had, repeatedly, conversations with Mr. Emerson on the subject of the quality of the township, as represented in these papers. The papers annexed, marked C and D, are true copies of the originals produced. I exhibited these papers to Mr. Doggett previous to his purchasing, and to every body else who thought of purchasing, and made statements to them according to my own belief, which corresponded to these documents. After I had sold to Mr. Doggett and the Portsmouth purchasers, the latter claimed a deduction on account of part of the township being covered with water, stating that Emerson and Roberts had had an allowance, and that they ought to have it too. This allowance I declined to make, and told them that I sold it to them for a full township. I did sell to Mr. Doggett one quarter of the said township at the rate of six dollars and fifty cents the acre, estimating the township at twenty-two thousand and forty acres, exclusive of one thousand acres which was always reserved to public uses. This was on the afternoon of the 8th of June, the day on which the contract was to expire. I afterwards sold four-tenths to the Portsmouth purchasers, and on the same evening I communicated to Mr. Emerson that I had effected the sale. The other one-tenth was reserved for Mr. Goss and myself. The next morning Mr. Goss found fault that no more was reserved for himself and me, and I then prevailed upon Mr. Doggett to relinquish to us one-half of his one-fourth. For this purpose I had to go to Orono to find Mr. Doggett. Within a few days after this sale, I procured deeds for the purchasers for their respective shares from the land agent of the State of Maine. These deeds I procured upon the written order of Mr. Emerson, who was obliged to leave town, which was the reason I had to attend to it. Mr. Doggett was to have paid one-third cash, and one-third at the end of one year, and one-third at the end of two years. Mr. Emerson was satisfied that Mr. Doggett was responsible, and was content to take his notes at sixty days for the cash payment. Mr. Emerson attended at the settlement and received the notes himself; and Mr. Doggett received a deed for one undivided eighth of the township. The notes for the whole of the purchase money were given at the same time. Mr. Emerson in all his conversations with me held out these surveys, which I have produced, as containing a fair representation of the township. Being requested to annex the originals of the papers produced by him to this deposition, the witness declines, stating that he wishes to retain them in his own possession, and copies are accordingly annexed, and the originals returned to him.

JOHN WILLIAMS.

Sworn this fourth day of May, 1842.
Before me, J. W. METCALF,
U. S. Com.

(The papers annexed to this deposition are, verbatim, like those annexed to his second deposition, and are recorded with that deposition.)

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking affidavits and bail in civil causes, depending in the court of the United States," passed February 20th, 1812, and the act of Congress entitled "an act in addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "an act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness resides at a distance of more than one hundred miles from the place of trial of the matter of controversy, wherein the same are taken. I further certify, that no notification of the time and place of taking the said deposition, signed by me, was made out and served on any person to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit; because neither the parties, nor their agent or attorney, lived within one hundred miles of the place of taking the same. I further certify, that, on the fourth day of May, A. D. 1842, I was attended by the counsel for the complainant, and by the witness, who was of sound mind, and lawful age, and the witness was by me first carefully examined, and cautioned, and sworn, to testify the whole truth; and the deposition was by me reduced to writing in the presence of the witness, and from his statement; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and forwarding the same, with my own hand, to the court for which the same was taken. And I do further certify, that I am not of counsel, nor attorney, for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

J. W. METCALF, [L. S.]
U. S. commissioner circuit court of the United States for the southern district of New York, in the second circuit.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that I am well acquainted with the handwriting of James W. Metcalf, whose name is subscribed to the annexed depositions and certificates, and that the signature to the same is in his proper

handwriting. And I do further certify, that he was at the time of signing the same a commissioner, duly appointed under the several acts of Congress, referred to in the said certificate, by the circuit court of the United States of America, for the southern district of New York, in the second circuit.

In testimony whereof, I have hereunto subscribed my name and have affixed the seal of the said circuit court, this fourth day of May, [L. S.] in the year of our Lord one thousand eight hundred and forty-two, and of the independence of these United States the sixty-sixth.

J. W. METCALF, *Clk.*

Plaintiff's interrogatories to John Williams.

1st interrogatory. Do you know the parties, complainant and defendants, in the title to these interrogatories named, or either of them; and how long have you known them, respectively, or such of them as you do know?

2d. Did you, at any and what time, make any and what arrangement for the selling of township known as number three, in the thirteenth range of townships, west from the east line of the State of Maine; and with whom was such arrangement made? State all the particulars fully to the utmost of your knowledge and recollection.

3d. Whether or no you did, at any and what time, receive from William Emerson, one of the defendants, or from any other and what person, any and what bond, obligation, memorandum, or other paper or document, authorizing you to sell, or dispose of, the said township, or any part or portion of it, or giving you the refusal of the said township, or in any way relating to the said township, or any part of it?

4th. If you say you have received any such paper as is just inquired of, please annex the original to your deposition.

5th. Were any and what representations of the quantity of land in the said township, or of the quantity of timber on the said township, made to you by any and what person at the time you received the said bond or memorandum, or at any other time, either before or after the receipt by you of the said bond or memorandum? State fully and particularly.

6th. Were there any certificates, or other papers, put into your hands by any and what person or persons, at or about the time of your receiving the said bond or memorandum, relating to the quantity of timber on the said land? If so, state what the certificates were, when and where, and of whom you received; and annex the original certificates to your deposition.

7th. Did you or not, at any and what time, converse with any and which of the defendants in this cause, about any such certificates, or about the quantity of land in the said township, or about the quantity of timber on the said township, or about the actual value of the said township? If yea, state such conversation fully and particularly, and where and when they took place.

8th. Did you bargain for the sale of any and what portion of the said township to the complainant in this suit?

9th. If you sold any portion of the said township to the complainant, state what portion, and when you sold it, and on what terms and conditions. State fully and particularly.

10th. Did you at any and what time, make any and what representation to the complainant in regard to the quantity of timber upon the said land, and the quantity of land upon the said township? State fully and particularly.

(Objected to.)

11th. Did you exhibit to the plaintiff in this suit, at any and what time, any and what certificates of explorers or of any other person or persons, and what person or persons, respecting the quantity of timber on the said township; and if so, where, when, and of whom did you obtain such certificates, and where are they at this time? State fully and particularly.

12th. Did you or not make any and what verbal or written representations to the complainant before closing the bargain for the purchase of the said land, in relation to the quantity of land in the said township? State fully and particularly.

(Objected to).

13th. Please annex to your deposition all the papers now in your possession relating to the said township or the timber thereon, and the sale thereof; and state when, and where, and of whom you received such papers, and each of them.

14th. If you refuse to annex the original papers, then annex accurate copies of every such paper; and state where, and when, and of whom you received each and every paper of which the copies are annexed; and let the magistrate taking this your deposition mark each *original* paper with his name, or in some other way, and then state yourself in your deposition how the said papers are marked, and what they are, and whether or no they are marked by the magistrate, and when so marked?

15th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. P. CHANDLER,
Solicitor for the complainant.

Defendants' cross interrogatories to John Williams.

1. If you answer the third direct interrogatory in the affirmative, state who wrote said paper, where the same was written, when Mr. Emerson first saw it, when and were he signed it, and at whose solicitation and request.

2. Did you leave Bangor in the steamboat the same day said pa-

per was signed by said Emerson; what hour of said day did said boat leave Bangor?

3. What sum was you to pay for said township; and why was the contract expressed in other terms?

4. If in answer to any of the interrogatories you state a fact, state fully the time, place, and circumstances connected therewith.

J. P. ROGERS,
Solicitor for defendants.

It is hereby agreed that George S. Hillard, esq., one of the commissioners of the circuit court of the United States, in Boston, shall take the answers of John Williams to the direct and cross interrogatories hereto annexed, to be used in the cause pending in the circuit court of the United States for the district of Maine, wherein John Doggett is plaintiff, and William Emerson and others, defendants. Either party may be allowed to take copies of the deposition before it is sealed up by the commissioner.

T. P. CHANDLER,
Solicitor for the plaintiff.
J. P. ROGERS,
Solicitor for the defendants.

Nov. 28, 1842.

The answers of John Williams to complainant's interrogatories.

To the first interrogatory he says: I have known the complainant about ten years, I have know William Emerson twenty years, A. M. Roberts ten or fifteen years, and Isaac Farrar from a boy. I have been introduced to Mr. Mason and Mr. Norcross, but do not know them.

To the second interrogatory he says: About the middle of May, 1835, I was first made acquainted with the said township, number three, in the thirteenth range. I had gone to Bangor on business connected with another township, and called on Mr. Emerson, one of the respondents, and Mr. Cyrus Goss, in relation to this other township, but they declined entering into any negotiation in regard to that township, but proposed to me to take an interest in this township, number three, which Mr. Emerson had to dispose of. The proposal was that I should take Mr. Emerson's written agreement for a deed of three quarters of the township, and at my request Mr. Emerson accordingly gave me such a paper, the condition of which was to give me the refusal of three quarters of the township, until the land sale at Bangor, which was to take place on the eighth day of June, if I remember right. I left Bangor immediately after receiving this paper, and returned home, and attempted to dispose of this three quarters of the said township, but did not succeed until my return to Bangor, which was two or three days only before the land sale. I there found the complainant, Ichabod Bartlett, of Portsmouth, C. W. Cutter and J. T. Goddard, both also of Portsmouth, and I effected a sale of the said three quarters to them, each taking one quarter of the said three quarters. Before the deeds

were sold Mr. Doggett consented to let me and Mr. Cyrus Goss have one half of his purchase, so that he received only one eighth of three quarters. The deeds were given by Mr. Emerson, and I think not until one or two days after the land sale, but I am not certain.

To the third interrogatory he says: I did receive from Mr. Emerson of the defendants a paper or memorandum in writing, giving me the refusal of three quarters of the said township, No. 3, until the eighth day of June, 1835; my own recollection is, that I received this paper about the middle of May, 1835, and on referring to a copy of it I perceive that it is dated May 19th, and I have no doubt that I received it on that day or the day after.

To the fourth interrogatory he says: The original of the said paper is not now in my possession, and I know not where it is. A copy is hereto annexed, marked D.

To the fifth interrogatory he says: It was represented by Mr. Emerson that it was a full township, containing twenty-two thousand and forty acres, after reserving one thousand for public purposes. These were made at or about the time I received the said memorandum. They were also confirmed at the time by Mr. Cyrus Goss, and subsequently, but before the deeds were given by Mr. A. M. Roberts. Mr. Emerson also stated to me that it contained eight thousand feet of pine timber to the acre.

To the sixth interrogatory he says: Two certificates were put into my hands by Mr. Cyrus Goss and Mr. Hazen Mitchell. One was signed by John Thomas, and the other by John Towle and Benjamin Dyer. This was at Bangor, and at or about the time that I received the memorandum of Mr. Emerson, and it was then and there that I first saw these certificates. After I had left Bangor these certificates were forwarded to me at Dover, N. H., in a letter from Mr. Hazen Mitchell. The originals of these certificates are hereto annexed, marked A and B.

To the seventh interrogatory he says: I had a conversation with Mr. Emerson at or about the time I took the memorandum from him, in which he confirmed the statements of these certificates. He said that Towle's certificate was especially to be relied upon. He also stated that it was a full township, containing twenty-two thousand and forty acres. He said, also, that he thought the land very valuable. On my return to Bangor, a few days before June 8th, Mr. A. M. Roberts was in the steamboat with me, and we spoke of the purchase, and of the said township. I can't state the particulars of what was said, but he gave me as favorable an opinion of the land as any I had had before from any body, and seemed to be quite indifferent whether the bargain was carried out or not.

To the eighth interrogatory he says· One-eighth of three quarters of the said township was disposed of through me to the complainant, as I have before stated.

To the ninth interrogatory he says: I have already mentioned the amount disposed of to the complainant. The terms of payment were six dollars and a half per acre, one-third cash and the remainder in one

and two years, I believe. It might have been one-quarter cash. It was about the eighth of June.

To the tenth interrogatory he says: I presented the certificates before mentioned to the complainant, and told him the statements therein contained were correct, and might be relied upon. I don't remember telling him any further; this was after my return to Bangor, and two or three days before the eighth of June, 1835.

To the eleventh interrogatory he says: I did exhibit to the plaintiff the two certificates before mentioned, but no others. This was in Bangor, two or three days before June 8th. I had received these certificates by post from Mr. Mitchell, as I have before mentioned, some time in the latter part of May. The certificates are now annexed to this my deposition.

To the twelfth interrogatory he says: In my conversations with the complainant, before closing the bargain with him, I stated it to be a township of the common size. I made no written communications to him on the subject.

To the thirteenth interrogatory he says: I have no other papers in my possession than the two certificates before mentioned, which were sent to me by Mr. Mitchell, as before mentioned, and which I hereto annex.

To the fourteenth interrogatory he says: The said certificates are hereto annexed. That signed by John Thomas is marked A, and that by Towle and Dyer is marked B; and both are also marked by the magistrate's initials. I hereto annex a copy of a note, addressed by me to Mr. Emerson, on the nineteenth day of May, 1835, at Bangor, and of his agreement respecting the township number three, of the same date, sent to me in reply thereto. I have not the originals in my possession, and know not where they are. The copy of the said note is marked C, and of the agreement D, and both with the magistrate's initials. The papers are all marked by the magistrate in my presence.

To the fifteenth interrogatory he says: I know of nothing further.

Answers to cross interrogatories on behalf of the defendants.

To the first cross interrogatory he says: I dont know who wrote the paper. It was written at Bangor, and I presume at Mr. Emerson's house. I wrote the note to Mr. Emerson on the evening of the day I arrived at Bangor, and gave it to Mr. Goss to carry to Mr. Emerson, and he brought me back Mr. Emerson's answer the next morning. It must have been signed that night, or the next morning. I only know that it was given in answer to my note, and do not know of any other solicitation or request.

To the second cross interrogatory he says: I did leave Bangor in the steamboat on the day when I received the said paper; whether it was signed by him on that day or not I cannot say. The boat left Bangor at eight o'clock in the morning.

To the third cross interrogatory he says: I was to pay ninety thousand dollars for the three quarters; that is, I was to have all above ninety thousand dollars that it sold for. I presume the reason that this con-

tract was not expressed was that I did not wish to have the arrangement made known.

To the fourth cross interrogatory he says: I have followed the directions herein contained to the best of my knowledge and ability.

JOHN WILLIAMS.

UNITED STATES OF AMERICA,

District of Massachusetts, ss:

December the seventeenth, A. D. 1843.

On this date personally appeared before me, the subscriber, the deponent, whose name is above written, and, being by me carefully sworn to tell the truth, the whole truth, and nothing but the truth, he gave the foregoing deposition in answer to the interrogatories hereto annexed, and subscribed the same, which were reduced to writing by me.

Taken on behalf of the plaintiff, by virtue of the agreement hereto annexed, and to be used in the case therein mentioned.

GEO. S. HILLARD, *Commissioner.*

Paper marked A, (G. S. H.) Original, J. W.

I hereby certify, that I explored township No. 3, 13th range, with John Towle and Benjamin Dyer. I have been in the habit of exploring, more or less, for several years past, and I think with them that it is worth as much or more than the Carriboo town. No. 2, 12th range, and is the best township I have ever explored.

JOHN THOMAS.

Bangor, April 14th, 1835.

Paper marked B, (G. S. H.) Original.

Mr. H. Mitchell. Sir: Agreeable to your desire, expressed in letter to me by Mr. Shaw, I took Capt. Dyer, and also Mr. John Thomas, of Brownville, and went to town. No. 3, in 13, and, after finding the east line of the town, upon the south side of the Carriboo lake, we crossed the lake northerly, bearing a little west, for the purpose of going into a body of timber to ascertain its quality, through which timber we traveled about a mile, and found it to be the first rate of large bodied trees, from ten to twelve M per acre; then, half a mile through a lot of middling quality, and climbing on a ridge of hard wood, we saw, one-half a mile distant, the commencement of another birth, to which we could see no end; and southward we travelled half a mile to it, and then took a course N. W., about a mile and a half through large and good timber the most of the way, until we came to a hard wood knoll, where we climbed again, and saw that the timber we were in covered all the west part of the town; then, going half a mile further west, across a bog brook, which we supposed run into the lake, or small pond at the head of the lake, satisfied ourselves that the timber was large and good, by far exceeding that I had ever seen before. And, as you wished me to compare it with the Carriboo No. 2, in 12, I think it better; and, as to the Howe town. it must exceed that by far in value for timber. I should

judge, from what I have seen, there could be no less than one hundred and fifty or two hundred million. In going on to or from No. 3, we crossed the Carriboo in different places, in order to compare it as you wished me to do, and found the timber to be much better than the Carriboo. I could not think any less in quantity, and the best and most valuable timber town. I have ever seen; and am ready to show you, or any one whom you will send, that the foregoing statements are correct.

Your most obedient servant,

JOHN TOWLE.

Bangor, Saturday April 11th, 1835.

Having explored township No. 3, 13th range, with Mr. Towle, I fully concur in what he has said of it.

BENJAMIN DYER.

Paper marked C, (G. S. H.)

WILLIAM EMERSON, esq.

DEAR SIR: I understand the bond to Mr. Goddard of township No. 3, in the 13th range, has expired. Will you, therefore, give me the refusal of the whole or a part of said tract; if so, at what price, and on what terms?

Respectfully yours, truly,

JOHN WILLIAMS.

Bangor, May 19, 1835.

Paper marked D, (G. S. H.)

JOHN WILLIAMS, esq.

DEAR SIR: In accordance to your request respecting township No. 3, range 13, I will give you the refusal of three-fourths of said township until the 8th of June next, at 6½ dollars per acre, payment one-third cash, the residue in one and two years, equal payments, with interest annually. I shall retain one-fourth for myself, Mr. Farrar, and Mr. Goss. Respectfully, yours,

WILLIAM EMERSON.

Bangor, May 19, 1835.

Agreement.

It is agreed by the parties that certified copies of the petition of William Emerson to the commissioners, and of the commissioners' report and judgment referred to in the bill in this cause, may be used in this cause without further proof, subject to the usual exceptions.

J. P. ROGERS, *for Defendants.*
T. P. CHANDLER, *for Plaintiff.*

Petition of William Emerson.

To the honorable Board of Commissioners, appointed by the resolves of March 31st, 1841, to settle claims between certain individuals and the State.

The memorial of William Emerson, of Bangor, in the county of

Penobscot, esquire, respectfully showeth: That, on the 21st day of February, A. D. 1835, your memorialist, together with Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, by the style and name of Norcross and Mason, all of said Bangor, merchants, purchased of the State township No. 3 in the 13th range of townships west from the east line of the State, containing 19,825 acres, at three dollars and twenty-five cents per acre; that they paid in cash, at the time of the purchase, $21,477 08, and gave their notes for the balance, being two-thirds of the amount of the purchase, on which the sum of $4,239 39 has since been paid, making a sum total of $25,716 47, received by the State on account of said town. The purchase was made without the purchasers having seen the town, and without any other knowledge of its quality than the representations of the State's agent, who assured the purchasers that, by the report of Joseph L. Kelsey, made by the direction of Hon. Daniel Rose, land agent, in 1831, the town contained 18,000,000 feet of merchantable pine timber of the first quality, and that he had no doubt the estimate would rather overrun than fall short, as the State surveyors were expected to be very cautious in their estimates. Relying upon these statements, and at the same time informing the agent that they had no knowledge of the town other than his representations, they made the purchase. There has been no timber cut, and the town remains in the same condition as when purchased. The State has sold the best timber lands in this section, the last two years, at prices varying from one dollar to one dollar and twenty cents per acre; and picked lots in No. 4, in the 13th range, a town lying directly north of No. 3, and said selected lots being greatly superior to No. 3, were sold by the agent in 1839 at one dollar and twenty cents per acre. Upon examining the town for the purpose of operating, they found the timber so defective as to be nearly worthless. Large groves of pine, which had a fair appearance, and would be likely to deceive a person not well acquainted with lumbering, were found upon inspection to be so rotten as to be unfit to cut; and after a thorough examination they could not find a chance to put in more than one team for a winter's logging upon merchantable timber. Instead of 18,000,000, the town does not contain 3,000,000—probably not 1,000,000—of merchantable lumber of the first quality. Your memorialist would further represent that the town was purchased exclusively for the timber, and that the soil, at such a distance from settlements and roads, is comparatively worthless. This town was estimated by Milford P. Norton, esq., land agent in 1830, to be worth about twenty-five cents per acre. This communication was made to the governor and council, and filed away in the vaults attached to the secretary's office, and its existence was unknown at the land office until the present year. This price probably bears as large a ratio to the actual amount of timber of the first quality, as three dollars and twenty-five cents does to the amount certified to by Mr. Kelsey, then in the employ of the State. And your memorialist would be equitably entitled, upon this principle, to have a large portion of the payment already made to the State re-

funded. But he has no expectation, nor does he ask the State to pay back any part of the money already received. The State, however, still holds notes of your memorialist to a large amount, given for said town in exchange for the original notes, and secured by mortgage, he having assumed the whole debt to the State. And said Roberts, Farrar, and Norcross, and Mason, having released to him all claim against the State for deduction, or otherwise, in consideration of said transaction, your memorialist, therefore, as the representative of the original purchasers, believing himself entitled, upon every principle of equity, justice, and expediency, to have the notes held by the State against him for said town cancelled, and his mortgages to the State on account of said notes discharged, makes this request of your honorable body, and files this brief statement of his case agreeably to the provisions of the "Resolves for the appointment of a board of commissioners to settle claims between certain individuals and the State," approved March 31st, A. D. 1841, and a resolve additional to said resolves.

WILLIAM EMERSON.

BANGOR, *April* 29, 1841.

And your memorialist, in pursuance of the suggestion of the commissioners, and in compliance with their order, would further represent, that in the sale of the three-fourths of said township to the grantees of the seven and a half tenths, he had no interest in said sale, and acquired thereby no interest in the money or notes received from said purchasers, excepting what he derived through Norcross and Mason by a subsequent agreement with them, by which he assumed their interest in the original purchase, and the consideration received from said purchasers, which was one-third of ninety thousand dollars, and for which he paid the nominal amount thereof, deducting therefrom the amount due from them to the State. That of the ninety thousand dollars, thirty-one thousand only have been paid by the purchasers to your petitioner, or to either of his associates, to his knowledge or belief; and in this amount the sum of four thousand dollars, paid by your petitioner for the advance money on one-tenth sold to Cyrus Goss, is included, which being deducted leaves the sum of twenty-seven thousand dollars only, paid by the purchasers aforesaid. To this sum may be added $1,000, secured by mortgage of Williams' one-eighth, but not yet paid; and that in the original contract of sale the agreement was made with Williams, and the consideration of sale was received from Williams, and not from the said Doggett and others. Your memorialist admits that Amos M. Roberts and Isaac Farrar did pay him a consideration for assuming their liability to the State, and refers to their testimony for the amount and manner of said payments. From that amount, however, should be deducted the notes given and paid by him to Norcross and Mason, and the amount advanced for said Goss, with the interest paid thereon, together with the expenses of exploration, the negotiations with Doggett, and other expenses growing out of transactions which were occasioned by the error of the State, which would exceed the

amount aforesaid. Your petitioner is now the owner of three-eighths of this township, which three-eighths are mortgaged to the State, and which he asks to have released as before requested. And your memorialist avers that this statement comprises all the facts and circumstances material, in his estimation, to the relief sought.

(Signed) WILLIAM EMERSON.

PENOBSCOT, *ss:*

Then personally appeared the above named William Emerson, and made oath that the above statement by him subscribed is true, according to the best of his knowledge and belief.

Before me,

HENRY V. POOR,
Justice of the Peace.

July 14th, 1841.

LAND OFFICE,
Augusta, March 14, 1843.

The foregoing is a true copy of the memorial of William Emerson, to the board of commissioners appointed by the resolves of March 31st, 1841, to settle claims between certain individuals and the State.

Attest, L. BRADLEY,
Land Agent.

The Commissioners' report is set forth in the bill verbatim ante.

Deed.

Know all men by these presents, that I, John Hodgdon, agent to superintend and manage the sale and settlement of the public lands of the State of Maine, in virtue of the authority by law in such agent vested, in consideration of eight thousand fifty-three dollars ninety-one cents, paid for the use of said State by John Doggett, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, the receipt whereof, to the use aforesaid, I acknowledge, do hereby, in behalf of said State, give, grant, bargain, sell, and convey to said Doggett, his heirs and assigns forever, the following described land, to wit, one undivided eighth part of all the lots from one to thirty-six inclusive, in township number three, of the thirteenth range of townships west from the east line of the State, and embracing one undivided eighth part of the whole of said township, which was assigned to the State of Maine as a township six miles square, be the same more or less, reserving however one hundred and twenty-five acres for public uses from said eighth part; to have and to hold the same, with all the privileges and appurtenances thereof, to the said Doggett, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, I, the said agent, in behalf of said State, have hereunto subscribed my name and affixed my seal this eighth day of June, in the year of our Lord one thousand eight hundred and thirty-five.

JOHN HODGDON. [L. S.]

Signed, sealed, and delivered in presence of—
E. G. RAWSON.

PENOBSCOT, *ss:*

June 8th, 1835.

Personally appeared John Hodgdon, and acknowledged the above instrument by him subscribed to be his act and deed, as agent as aforesaid, made in behalf of said State. Before me,

E. G. RAWSON,
Justice of the Peace.

(Endorsed.)

"State of Maine to John Doggett. Received July 29, 1835."

SOMERSET, *ss:*

Received 29th July, 1835, and recorded vol. 36, page 334.

ASA CLARK, *Register.*

And on the part of the defendants the following depositions were opened and filed, viz:

UNITED STATES OF AMERICA,
Maine district, ss. First Circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in
[L. S.] the year of our Lord one thousand eight hundred and forty-three.

To Frederick Hobbs, of Bangor, in said Maine district, esquire:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories and cross interrogatories which may be propounded by the parties to Cyrus Goss, Levi Bradley, John Towle, William H. Mills, George F. Marston, George H. Pierce, and Ebenezer G. Rawson, witnesses to be produced and examined in behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is plaintiff in equity, and William Emerson and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid, to be brought before you, and each witness while present before you to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this sixth day of June, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

UNITED STATES, *District of Maine, ss:*

By virtue of the within commission to me directed, I have caused the said Cyrus Goss, Levi Bradley, John Towle, William H. Mills, George F. Marston, and Ebenezer G. Rawson, to be brought before me, and each witness while before me, and apart from all others, was carefully examined on oath touching the premises, and having taken his examination, his testimony in answer to said interrogatories was reduced to writing by me, and each witness subscribed the same in my presence. The execution of this commission therefore appears in the deposition of Cyrus Goss, to which is attached the papers marked A, B, and C, Levi Bradley, and schedules A and B. Also the depositions of John Towle, Wm. H. Hills, George F. Marston and Ebenezer G. Rawson, identified by my signatures.

FRED. HOBBS,
Commissioner.

Defendants' interrogatories to Cyrus Goss.

1st interrogatory. State your age, occupation, and place of residence.

2. Do you know the parties named in the title to these interrogatories? Are you related to, or connected with, any of them? If yea, with whom, and how? Does said Emerson board in your family?

3. Have you, at any time, been interested in any bond or refusal of the whole or of any part of township No. 3, 13th range of townships west from the east line of the State of Maine? If yea, annex a copy of every such bond or refusal; or, if you have not copies, state the date, names of parties to, and terms of each, the extent of your interest in the same, and the names of all interested with you.

4. When did you first entertain the design of obtaining an interest in said township, and why? The complainant's solicitor objects to the foregoing interrogatory as irrelevant.

5. Did you, at any time, take any measures to procure information relative to the value of said township? If yea, what?

6. If you have stated that an examination of said township was made by your directions, or under your authority, in whole or in part, state when, the names of the person or persons employed for that purpose, the reasons for selecting him or them, what instructions were given; and if those directions were in writing, and you have a copy, annex it.

7. Was any one interested or associated with you in your plans relative to this township when such examination was made; and if any one, who?

8. Were you interested with John Williams at any time in a refusal of three quarters of said township? If so, who else was interested with you, and what was the nature and extent of the interest of each? If the contract between you and the said Williams was in writing, annex it, or a copy of it, if in your power; and, if that is not in your power, state its terms.

9. Please annex said refusal, if you have it, or a copy of it, if you have any which you know to be correct; and if you have neither original or copy, state when and where you last saw it; its date, terms, and the names of the parties thereto; and every thing that you know relating to the final disposal of it.

10. Had you any agency in procuring said refusal? Had you any interview with said Williams prior, and in reference to, the procurement of said refusal? If yea, state when and where; whether or no any other person (and if any, who) was present, any, and what part of the time; and what contract or agreement, if any, was then made in reference to such refusal.

11. State when, where, and by whom said refusal was written; and if it was signed by said Emerson, state when, where, and by whom it was presented to him, and his signature thereto requested; whether or no he made any objection to its terms, and if any, what, and how such objection was combatted and removed; where it was signed, and all that was said and done in reference thereto, by the said Emerson, or in his presence and hearing, fully and particularly.

12. When did you cease to be interested in said refusals, and how; to whom did you sell your interest, and for what sum; and how and when was the purchase money paid?

13. Had you, at any time, in your possession, any certificates relating to the quantity of timber on said township, which afterwards came into the possession of the said Williams? If yea, state by whom said certificates were signed, their purport, briefly; at whose request or procurement they were made; whose property they were; when, where, or how they came into Williams's possession; and where, and in whose hands, they had been prior to that time; and fully and particularly all that you know relative to said certificates; and if you have in your possession any letters or other papers relating to said certificates, or the disposal of them, please annex them, or copies of them, to your answer.

14. State whether or no you read or exhibited said certificates, or copies of them, to said Williams, or know that any other person did so, at or about the time of the procurement of said refusal, to wit, on or about May 19th, 1835.

15. Whether or no said certificates were in Bangor at that time; and if yea, in whose possession.

16. Whether or no any copies of said certificates had been taken prior to that time, and were then in Bangor.

17. Whether or no these defendants, or either of them, (and if either, which,) had any (and if any, what) agency in the procurement or use of said certificates.

18. Whether or no, prior to the sale of three-fourths of said township, in June, 1835, you, or any other person to your knowledge, read or exhibited to those defendants, or either of them, (and if either, which,) all or any of said certificates; or informed them, or either of them, (and if either, which,) of the contents or existence of such certificates.

19. State how much the men who signed those certificates were paid,

severally, for services in exploring and making reports; at what rate per day, and by whom?

20. When did you learn, that in the sale of this township by the State, the land covered by water was excluded in making up the estimate of the number of acres to be paid for? Was it before or after the date of said refusal to Williams?

21. Was or not such deduction usual? In how many instances have you known it to be made?

22. Did you, or not, expect the same deduction to be made to you, in case you should take up the land on any bond or refusal in which you were interested?

23. Did you, or not, inform said Williams, prior to the procurement of said refusal, that such deduction had been made to these defendants, and would be made by them in selling? If yea, state fully when and where this information was given him, what was said on the subject, and whether or no it was the intention of either, or of both of you, to sell the township as a full one, whilst you had the benefit of the deduction for water in purchasing; whether or no this difference in number of acres was calculated on as a source of profit to you.

24. Was such intention (if it existed) disclosed to these defendants, or either of them; and, if either, which?

25. Do you know any other fact tending to show that Williams was aware of the deduction for water? If so, state it; and if you had any other conversation with him on the subject prior to, or about the time of, the sale of said township in June, 1835, state it.

26. At what price did you tell Williams that three quarters of this township could probably be had? Was that the price named in the refusal?

27. If you have stated that the price named in the refusal differed from the true one, state at whose suggestion, and why the true price was not named.

28. Did you, or not, prior to said sale in June, 1835, tell these defendants, or either of them, (and if either, which,) your reasons for inserting a price different from the true one in the refusal?

29. State who was present when the proposition was first named between you and said Williams, for him to take an interest in this township, or a refusal of it, or of any part of it; and when and where it was.

30. Whether or no you and Mr. Emerson jointly, or either in presence of the other, ever made such a proposition to said Williams; and, if so, when and where.

31. Whether or no, at the interview in which this proposition was first named between you, Williams said, or intimated, that he had conversed with Emerson, or any other person, on the subject; whether he treated the proposition as new, or as one that had previously engaged his attention.

32. State at what time in the day or evening said interview commenced; at what time you and Williams separated; whether or no you saw Mr. Emerson afterwards on that day; at what time and where you

saw him on the next day; whether or no you saw him and Williams together; and, if so, where, how, and why they came together; what transpired between them; how long they were together; which departed first; the reason he assigned for going; whether they met as persons who had recently seen each other, or as strangers; and every thing, not before stated, that transpired relative to the procurement of said refusal, fully and particularly.

33. Whether or no said Williams, in any interview prior to the procurement of said refusal, said or intimated that he had seen Mr. Emerson during his then visit at Bangor; and, if yea, what he said on the subject.

34. How long was he in Bangor on that occasion? State the times of his arriving and leaving, or when you first and last saw him during that visit.

35. At what time in the morning did the steamer for Portland and Boston leave Bangor, on the 19th of May, 1835? State your knowledge, and means of knowledge

36. State whether or no you heard said Williams, prior to the sale of three-fourths of this township, on or about the 8th of June, 1835, say or intimate that he had received any information, or heard any representations relative to said township or said certificates, from either of these defendants, or had had any conversation with either of them on the subject; and, if yea, state what he said fully.

37. Did you, at Bangor, on the 25th day of August, A. D. 1838, before William H. McCrillis, esq., N. H. commissioner, give a deposition, to be used in a case pending in a court in New Hampshire, between said Williams and C. W. Cutter, esq.? If so, at whose request was said deposition given? Was said Williams present? Who acted as his attorney?

38. Was a paper then and there exhibited to you, as being a copy of the refusal herein before mentioned? If so, state by whom it was procured and exhibited; what question was put to you respecting it; what answer you made; whether or no said paper was annexed to the deposition you then gave; and annex a copy of said paper to this deposition.

39. Is, or is not, said paper a correct copy of said refusal?

40. Have you in your possession any other paper, purporting to be a copy of said refusal? If so, annex it, and state when, from whom, and how you received it; and if you say it was sent you, in answer to any request on your part, state what that request was, and the reasons which induced you to make it, fully.

41. State whether or no, at or about the time said refusal was obtained, you carried a letter or note from said Williams to said Emerson, containing a request for such a refusal, or any written communication of any kind, or received any such from said Williams to carry to said Emerson, and when you first saw or heard of any such writing.

42. Whether or no there was in said refusal, when it was executed by said Emerson, this clause, "I shall retain one-fourth for myself, Mr. Farrar, and Mr. Goss;" or this, "reserving one-quarter part of said

township for Isaac Farrar, Cyrus Goss, and myself;" or any thing of like purport.

43. On what day of June, A. D. 1835, was the great public land sale, by the State, at Bangor?

44. What portion of said township did you purchase, and when?

45. Was said Williams a part owner or copurchaser with you, of said portion?

46. Did John Towle, who made a certificate in reference to the timber on this township, purchase of you any interest in said portion, or in the profits which might arise from the sale of it? If yea, state when, what interest he purchased, how much he paid for it, and in what way he paid it, fully and particularly.

47. If you have stated that the certificate of John Thomas was one of those in your possession, and afterwards in the possession of Williams, state when and where said certificate was made, by whom it was written, upon what solicitation or request, or what offers of money, or promise of benefit (if any) it was given; what pay was demanded by said Thomas for exploring said township and giving said certificate; what pay he received; and fully and particularly all that transpired at the time.

48. When did you take up your residence in Bangor? Where did you reside for some years before that time? What was your business in Bangor, prior to May, 1835? What had it been in your former place of residence?

49. How long have you been acquainted with the said John Williams? How long did you and he reside in the same town? Name the town.

50. Have you, since you have resided in Bangor, been engaged in buying and selling land, or speculating in lands? If yea, how extensively; how many purchases and sales have you made?

51. Has or has not said Emerson been generally associated with you in your land speculations? State, in detail, all the instances in which he has been so associated, and how, and to what extent, he was interested in each.

52. Were you or not, prior to June 10th, 1835, in the habit of consulting or advising with said Emerson, in reference to your land speculations, or of disclosing your plans and schemes to him? State fully and particularly on this point.

53. When did you first inform said Emerson, or either of these defendants, that you were interested with said Williams in said refusal, or when did he or they first learn the fact?

54. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Plaintiff's cross-interrogatories to Cyrus Goss, a witness examined on the part of the defendant.

1. If, in answer to defendants' interrogatory sixth, you state the names of John Towle, Benjamin Dyer, and John Thomas, or either of them, as employed for the purpose of making the exploration of the township referred to in said interrogatory, then state where said Towle was, and in whose employ, at the time he received your instructions, and what employment he was then engaged in.

2. If, in an answer to defendants' interrogatory twelfth, you state when you ceased to be interested in said refusal, state also when Hazen Mitchell ceased to be interested in said refusal; and state who of the defendants, besides said Emerson, knew that you and said Mitchell were interested with said Williams in said refusal, before the sale of said township to the complainant, and to Bartlett, Cutter, Rundlett, and Goddard.

3. If you have stated that said township was explored by said Towle, Dyer, and Thomas, at your request, or at the request of you and said Mitchell, then state whether said Towle, Dyer, and Thomas, fulfilled your instructions and those of said Mitchell, relative to said exploration, and whether their certificates were made in the manner they were at your request, or that of said Mitchell, or of both, or at whose request they were made as they were.

4. State whether before or after said certificates were given by said Towle, Dyer, and Thomas, you, or any one else to your knowledge, stated to these defendants, or either of them, the result of the exploration so made by said Towle, Dyer, and Thomas.

5. State on what day, in fact, the bargain between complainant and defendants was completed; and state how many days it was after the eighth day of June, 1835.

6. State whether all the notes given by this complainant were not transferred to said Emerson by said Williams, and whether said Williams did not take one-eighth of said township for his profits, arising from the sale of three-fourths of said township to this complainant, and to Bartlett, Cutter, Rundlett, and Goddard; and, if so, what difference, if any, in money and notes, he paid for said eighth, and at what rate he had his eighth of said township.

7. State what interest you purchased in said township, and how you paid for the same; and how soon after you purchased the same you conveyed it to one of these defendants, and to which of them; state at what rate you had said interest, and whether you ever, in fact, paid any thing on your notes given for the same.

8. State whether or no William Emerson gave his own notes to Norcross and Mason, for their share of the proceeds of said sale, in lieu of the notes of this complainant, and Bartlett, Cutter, Rundlett, and Goddard; and whether or no said Emerson told you that Norcross and Mason refused to receive the notes of this complainant, and Bartlett, Cutter, Rundlett, and Goddard, for their share of the proceeds of said sale.

9. State whether or no said Emerson told you that Norcross and Mason refused to receive said notes, so rejected, because he, said Emerson, had inserted a different price, in the refusal to said Williams, from that which he was to receive upon sale of said township.

10. State whether the interrogatories put to you, on the part of the complainant or defendants in this cause, or any copies thereof, have ever been exhibited to you before giving your testimony; and, if so, when, and by whom; also, whether the substance or purport thereof have ever been stated to you before giving your testimony; and, if so, when, and by whom.

GEO. W. COOLEY,
Solicitor for the complainant.

Answers of Cyrus Goss, a witness examined on behalf of the defendants.

First. I am forty-nine years old, am a commission merchant, and reside in Bangor.

Second. I do know said parties; am slightly acquainted with the plaintiff, Dogget, but am intimately acquainted with the defendant Emerson, and others. William Emerson is a half brother of my wife, and boards in my family. I am in no way related to, or connected with, any other of said defendants.

Third. I have been interested in the refusal of three-quarters of said township number three, range thirteen. I cannot annex a copy of any bond; the following I believe to be a copy of the refusal:

"BANGOR, *May* 19, 1835.

"JOHN WILLIAMS, Esq.

"DEAR SIR: You may have the refusal of three undivided fourth parts of township number three, of the thirteenth range of townships west from the east line of the State of Maine, until the 8th of June, 1835, at six dollars and fifty cents per acre. The terms one-third cash, one-third in one, and one-third in two years, with interest annually.

(Signed)

"WILLIAM EMERSON."

John Williams and Hazen Mitchell were the only persons interested with me in the above refusal. My interest therein was one-third only. Prior to this, I was interested with Charles Goddard and Hazen Mitchell in said township.

Fourth. I first entertained the design of obtaining an interest in said township some time in March, 1835. I was induced so to do by information from Hazen Mitchell in regard to it.

Fifth. I did take measures to procure information relative to the value of said township, at one time. In March, 1835, Hazen Mitchell wrote to John Towle, who was then employed by Mitchell and myself as scaler on township No. 1, range 10, and directed Towle to take another man with him, and to explore No. 3, range 13. This letter was written by Mitchell, after consultation between us. Towle went on to

No. 3, range 13, as requested, taking Benjamin Dyer and John Thomas with him, and, after exploring the same, Towle made the report, in a letter to Hazen Mitchell, and left it with me.

Sixth. Towle made his report some time in April, 1835. Towle was selected to make this exploration because we thought it would be less expensive to employ him, then in the neighborhood of No. 3, range 13, and because he was experienced in the business. Dyer was also at work on No. 1, range 10. I have no copy of the instructions given to Towle. They, in substance, directed Towle to take another man with him, and to explore said township, ascertain the quantity and quality of timber, and the facilities of getting it off. To ascertain the value of the township.

Seventh. Hazen Mitchell was the only person interested with me in said township at the time of said examination.

Eighth. I was interested with John Williams at one time in a refusal of three quarters of said township. Hazen Mitchell was interested with us; Mitchell's and my interest was in the refusal of Emerson to Williams, which is copied in my third answer. We were interested one-third each. I am inclined to think the contract between Williams, Mitchell, and myself, was in writing. I have not a copy of it. It provided that we should be equally interested in the profits of the refusal. I cannot state its terms definitely.

Ninth. It is already copied as part of my answer to the third interrogatory. I think *that* is a true copy. I saw the original when it was given by Emerson to me. I procured it of Emerson for Williams, and handed it to him.

Tenth. I had an agency in procuring said refusal. I had an interview with said Williams prior, and in reference to, the procurement of said refusal, some time in May, 1835, at my counting-room in Bangor; Hazen Mitchell was present part of the time, till nine or ten o'clock in the evening. He then left Williams and myself alone. Mitchell was present about half or two-thirds of the time. I think a writing was made between us; at any rate, it was understood that Williams, Mitchell, and myself, were to be equally interested in said refusal.

Eleventh. The refusal was written at this interview in my counting-room; I think, by myself. It was signed by Emerson early the next morning. I presented it to Emerson for his signature at my house, but I think he walked with me to my counting-room, and signed it there. Emerson did make objection to signing it. His objection was, that six dollars and a half an acre was more than a hundred and twenty thousand dollars for the township. I think I said to Emerson, that it would not vary much from it, and that it would make no difference whether the bond was for six dollars and a half, or a hundred and twenty thousand dollars for the whole township. He then signed it. Emerson objected to signing it because he said he wanted further time for reflection, but the boat was going away, and Williams was about to leave in it, and he finally consented to sign it, and did so.

Twelfth. I forget the day on which I ceased to be interested in said

refusal. It was the same evening on which Williams sold to Ichabod Bartlett and others, and before he sold to them. I ceased to be interested therein by selling Mitchell's and my interest to Williams. We sold our interest for three thousand dollars. The purchase money was paid the next day after the sale to him by Robert N. M. Smyth's acceptance, payable at the Suffolk bank in six months, with interest.

Thirteenth. I had in my possession certificates relating to the quantity of timber on said township, which afterwards came into the possession of said Williams. They were signed by John Towle, Benjamin Dyer, and John Thomas. Towle and Dyer estimated the pine timber something like one hundred and fifty millions; that it was of a much better quality than the timber of the Cariboo township. Thomas did not go into an estimate of the timber, but said it was worth as much or more than the Cariboo, and the best township he ever explored. These certificates were made by request of Hazen Mitchell and myself. They were our property; they came into Williams's possession soon after the refusal by Emerson above mentioned. At the time of that refusal they were in Charles Goddard's hands. After Goddard's bond expired, they were handed to Williams, or sent to him by Hazen Mitchell, or placed by Goddard, by order of Mitchell, where Williams could get them. They were placed in Goddard's hands by Mitchell and myself, or sent to him by one or the other of us after Goddard had obtained a refusal of the township from Emerson and others. I have in my possession a letter from John Williams, dated "New York, May 16, 1842;" also, C. Goddard's letter, dated "Portland, April 15, 1835." Also, copies of what purport to be certificates of John Towle, Benjamin Dyer, and John Thomas. Thomas's is dated April 13, 1835. Towle and Dyer's, dated April 11, 1835. Also, a copy of William Emerson's refusal of two-thirds of said township to Williams. These copies of certificates and refusal were sent to me by John Williams from New York, some time in the spring or summer of 1842. The letter of Williams, marked A, the letter of Goddard, marked B, and the copies, marked C, above referred to, are annexed as part of my answer.

Fourteenth. I never did exhibit said certificates, or copies of them, to Williams, nor read them to him. Nor do I know that any other person did read or exhibit them, or copies of them, to Williams, on or about 19th May, 1835.

Fifteenth. They were not in Bangor at that time, to my knowledge.

Sixteenth. I know of no copies being taken at that time, or prior thereto.

Seventeenth. Neither of said defendants had any agency in procuring or using said certificates, or copies of them.

Eighteenth. I did not, nor did any other person, to my knowledge, prior to the sale of three-fourths of said township, in June, 1835, read or exhibit to these defendants, or either of them, all or any of said certificates, or inform them, or either of them, of the contents or existence of said certificates.

Nineteenth. I paid Dyer three dollars per day, and, I think, I paid

Thomas the same for exploring and making said certificates. Mitchell paid Towle, but I do not know how much.

Twentieth. I cannot state the precise time that I learnt the land covered by water was so excluded, but it was before said refusal to Williams.

Twenty-first. Such deduction was not usual, except by special agreement. I never knew it to be made except in that case.

Twenty-second. We were to pay at the rate of one hundred and twenty thousand dollars for the township without reference to water.

Twenty-third. I did inform Williams, prior to the procurement of said refusal, that such deduction had been made to these defendants, and would be made by them in selling. I so informed Williams at the time of our interview at my counting room. Williams observed that he could sell it for a full township. Our intention was to sell it for a full township, while we had the benefit of the deduction for water in purchasing. This difference was calculated upon as a source of profit to us.

Twenty-fourth. Such intention was not disclosed by me to either of said defendants.

Twenty-fifth. Williams stated to me, after he had bargained with Bartlett and others, that they wanted a deduction for water, and that he refused, saying he had sold it for a full township. I don't now recollect any further conversation between Williams and myself, prior to June, 1835, on the subject.

Twenty-sixth. I think I told Williams that the three quarters of the township could probably be had at one hundred and twenty thousand dollars for the whole, or six dollars an acre, I don't remember which. The price which I told him was not the one named in the refusal.

Twenty-seventh. It was at the suggestion of Williams that the true price was not named in the refusal. He said he could make a better profit by having it fixed at six dollars and a half an acre.

Twenty-eighth. I did not tell these defendants, or either of them, prior to the sale in June, 1835, my reasons for inserting a price in the refusal different from the true one.

Twenty-ninth. No one present, at first, when the proposition for Williams to take an interest in the township was first made. Mitchell came in soon after. It was at my counting room, I think, at the time of our interview there as I have before stated.

Thirtieth. Mr. Emerson and I never made such a proposition jointly, or either in the presence of the other, to said Williams.

Thirty-first. Williams never intimated to me that he had conversed with Mr. Emerson or any other person on the subject. He treated the proposition as a new one, and as if his attention was then first called to it.

Thirty-second. I think my first interview with Williams was sometime the latter part of the day, or first of the evening. It was as late as twelve o'clock when we separated. I did not see Emerson again on that day or evening. I saw him very early the next day. I think I called him up to execute this bond previous to the boat's leaving. I

don't recollect that I saw Williams and Emerson together. My impression is that Emerson signed the certificate and left the counting-room before Williams came in.

Thirty-third. Williams did not, in any interview prior to the procurement of said refusal, say or intimate that he had seen Mr. Emerson during his then visit at Bangor.

Thirty-fourth. Williams could not have been in Bangor more than one day. I think the first of my seeing him was in the morning previous to the interview in the evening, and I last saw him when leaving in the boat the next morning.

Thirty-fifth. The boat for Portland and Boston left Bangor on the 19th of May, 1835, at 6 o'clock in the morning. My means of knowledge is an advertisement of the time of her leaving, in the Bangor Whig and Courier of the 14th of May, 1835.

Thirty-sixth. I did not hear said Williams, prior to the sale of three fourths of this township, on or about the 8th of June, 1835, say or intimate that he had received any information, or heard any representations, relative to said township or said certificates from either of said defendants, or that he had had any conversation with either of them.

Thirty-seventh. I did give my deposition before William H. McCrillis, esquire, as inquired about. It was given at the request of John Williams, who was present. I don't remember who acted as his attorney. It strikes me it was Jonas Cutting, esq.

Thirty-eighth. A paper was then and there exhibited to me as being a copy of the refusal hereinbefore mentioned. It was produced and exhibited by Williams. I was asked whether it was a true copy of the refusal from Emerson to Williams. I answered, that the township was the same and the price was the same, and that I believed it to be a true copy. Said paper was then annexed to the deposition I then gave. It is already copied as part of my answer to the third interrogatory.

Thirty-ninth. I believe it is; I have no doubt it is a true copy of said refusal.

Fortieth. I have. It is annexed, marked C. I received it of John Williams, by mail, some time in the spring or summer of 1842. I sent to John Williams to send me a copy of the certificates marked C, and the copy of the refusal came with it. I wanted to use the certificates in defence of the suit of Warner et al. in equity, vs. Emerson and als.

Forty-first. I did not carry a letter or note from Emerson to Williams, at the time inquired about, containing a request for such refusal, nor any written communication of any kind; nor did I receive any such from Williams to carry to Emerson. I first heard of such a writing when I received the copies of the certificates from said Williams by mail. The same paper contained what purported to be a copy of a letter or note from Williams to Emerson, dated May 19, 1835, and is a part of paper C.

Forty-second. There was not in said refusal, when it was executed by said Emerson, either this clause, "I shall retain one fourth for my-

self, Mr. Farrar, and Mr. Goss," or this, " reserving one quarter part of said township for Isaac Farrar, Cyrus Goss, and myself," nor was there any thing of like purport.

Forty-third. I think the great public land sale by the State, at Bangor, was on the 10th of June, 1835.

Forty-fourth. I purchased for Mitchell and myself one tenth after the sale, or about the time of the sale to Bartlett and others.

Forty-fifth. Williams was not a part owner or co-purchaser with me of the tenth.

Forty-sixth. John Towle some time after this did purchase of me an interest in the tenth belonging to Mitchell and myself. He bought one half of the profits that might be obtained for the tenth, over and above six dollars and a half an acre. It was some time in June, 1835. He paid a thousand dollars for it, by a draft on Hazen Mitchell. The draft was accepted by Mitchell, and paid.

Forty-seventh. John Thomas's certificate was made some time in April, 1835, at my store, in Bangor; it was written by Thomas. I requested him to make it, on his offer to do so; I made him no offer of money, or promise of benefit, to make it; I think that Thomas asked five dollars a day for exploring. I refused to pay him that, but I think I paid him but three dollars; there was no long talk about it. Thomas was vexed that I would not pay him more than three dollars per day.

Forty-eighth. I took up my residence in Bangor, in August, 1832. I resided at Dover, New Hampshire, for some years before that time; my business in Bangor, prior to May, 1835, was that of a trader, mercantile business; it had been the same at Dover.

Forty-ninth. I think my first acquaintance with John Williams was somewhere about 1823; we resided in Dover together nine or ten years.

Fiftieth. I have been interested in three or four tracts of land, as a buyer and seller; not much in speculation in lands since I resided in Bangor.

Fifty-first. Emerson has never been associated with me in my land speculations, except in one instance. Emerson purchased, with H. Mitchell and myself, No. 1, range 10, one third each; I think there was no other township in which we were associated together, or parts of townships.

Fifty-second. I don't know that I was in the habit of consulting with Emerson as to my land speculations, or of disclosing my plans and schemes to him. I sometimes spoke to him of them, prior to June 10, 1835.

Fifty-third. I cannot say when I first informed Emerson, or either of these defendants, that I was interested with Williams in said refusal; nor can I say when they, or either of them, first had knowledge of the fact.

Fifty-fourth. I do not now recollect any thing material.

Cross examined.

First cross. John Towle was, at that time, in the employment of

Hazen Mitchell and myself, on township No. 1, range 10, scaling logs cut under our permit to Jameson, Smith, and others.

Second cross. Hazen Mitchell ceased to be interested in said refusal at the same time that I did. I don't know that Emerson, or either of the defendants, knew that Mitchell and I were interested with Williams in said refusal, before the sale to the complainant, and to Bartlett, Cutter, Rundlett, and Goddard.

Third cross. I have said that Towle was requested to take some one with him; he took Thomas unbeknown to us. They explored the township as requested by Mitchell in his letter to Towle. The certificates were made at my request; but the manner in which they were made was entirely that of Towle and Thomas, and in their handwriting. I don't recollect whether I wrote Dyer's confirmation of Towle's certificate at the foot of it, or not. I think I did not.

Fourth cross. I did not, nor did any one else, to my knowledge, state to the defendants, either before or after said certificates of Towle, Dyer, and Thomas were given, the result of the exploration so made by them.

Fifth cross. I know of no bargain between the complainant and the defendants.

Sixth cross. I don't know whether the notes given by Doggett, the complainant, were or were not transferred to said Emerson by said Williams. Williams took one eighth of the township, but whether he took it for profits or not, arising from the sale, I cannot say. I don't know what difference in money and notes Williams paid for the eighth. I don't know at what rate Williams had it; but I suppose at the rate of one hundred and twenty-thousand dollars for the whole township.

Seventh cross. I purchased, with Mitchell, one tenth of the township. I gave my note for the purchase money; one-third payable in sixty days, one-third in one year, and one-third in two years, to William Emerson. I can't tell how soon after; but, in a year or two after, I sold it to William Emerson, or reconveyed it to him. I had the tenth at the rate of one hundred and twenty thousand dollars for the township. I think I did not, in fact, pay anything on my notes given for the same, but I do not now fully recollect. On reference to the deed, I find I reconveyed the same estate to William Emerson on the 12th July, 1837.

Eighth cross. I do not know whether or not William Emerson gave his own notes to Norcross and Mason, for their share of the proceeds of said sale, in lieu of the notes of this complainant, Doggett, and Bartlett, Cutter, Rundlett, and Goddard. Emerson never told me that Norcross and Mason refused to receive the notes of the complainant, and Bartlett, Cutter, Rundlett, and Goddard, for their share of the proceeds of said sale. I have no recollection of it.

Ninth cross. Emerson never told me that Norcross and Mason refused to receive said notes so rejected, because he, said Emerson, had inserted a different price in the refusal to said Williams from that which he was to receive upon sale of said township.

Tenth cross. No; none of the interrogatories, or cross interrogatories,

now put to me, were ever shown to me, nor their substance made known to me, till put by the commissioner.

CYRUS GOSS.

Sept. 27, 1843; subscribed and sworn—
Before me, FRED. HOBBS,
Commissioner.

(A.)

NEW YORK, *May 16th*, 1842.

COLONEL CYRUS GOSS—DEAR SIR: Your favor of April 11th was received by due course of mail, and I have noted its contents, as well as the suggestions of Messrs. Row and Emerson, and yourself. Soon after the receipt of this letter Mr. Doggett happened to be here, and I was summoned before a commissioner of the district court to identify these certificates, and say that I had given them into the hands of said Doggett to examine as to the quality and quantity of timber on this land; and that I ascertained, from letters in my possession, that these certificates were forwarded me on the 19th of May, 1835, by Mr. Mitchell, agreeable to an understanding with him, at Bangor, when I took the bond of this township of Mr. Emerson. I stated, also, that you and Mr. Mitchell were to be equally interested with me in this trade; and that I subsequently bought you and Mitchell out. I now forward you a copy of John Thomas's certificate, and do it with the utmost confidence, that if it should be required, it will be forwarded to me on short notice. I trust there has been no inconvenience in this apparent delay in forwarding this Thomas's certificate.

Truly, your friend,

JOHN WILLIAMS.

If any further explanation is required in relation to this certificate, if Mr. Rowe will prepare it in form, I should be happy to make any such explanation. You can take it with you when you come to New York.

JOHN WILLIAMS.

B.

PORTLAND, *April* 15, 1835.

DEAR SIR: I was much gratified in receiving by Mr. H. Mitchell the report of Mr. Towle respecting No. 3, 13th; it is very satisfactory. The plans too will be of use; but we want six months time. I take the steamboat this morning for Boston.

Mr. Cutter and myself bought a bond of N. Haynes, esq., of your city, of a small tract of land formerly granted to the heirs of T. Danforth. This bond was given Mr. Haynes by Japheth Gilman; in this no time is named, but reference is made to a bond given to said Gilman and Cyrus S. Clark by John Ham and Samuel Larrabee, which, I am informed, expires the last of this month. Mr. Cutter thinks it has already expired. If we do not secure a title we shall lose two or three

hundred dollars paid. If any thing should prevent my return to Bangor in season to arrange the necessary business in relation to it, you will confer a favor by securing for me the title to one eighth of 5,200 acres, at $2 per acre; title comes from Ham and Larrabee. The deed to be made to me alone, as I have purchased Mr. Cutter's part.

In haste, yours,

C. GODDARD.

[The other papers annexed to this deposition are copies of those annexed to the deposition of John Williams.]

Defendants' interrogatories to Levi Bradley.

1st interrogatory. Are you land agent of the State of Maine?

2. Are the plan of township No. 3, 13th range, west from the east line of the State, made by J. L. Kelsey, and his field notes relative to said township, preserved among the records of your office? If yea, please annex a copy of said plan to your answer, and state the amount of pine timber on each lot in said township returned by said Kelsey in said field notes.

3. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Answers of Levi Bradley, a witness examined on the part of the defendants.

First. Yes, I am the land agent of the State of Maine.

Second. The original plan of township No. 3, range 13, west from the east line of the State, made by Joseph L. Kelsey in 1831, and his field notes, are in this office. On the 8th of September, 1831, said Kelsey returned to the land office of Maine a plan, with his field notes, of townships numbered two and three, in the thirteenth range of townships, and tract X in the fourteenth range, lying westerly of and adjoining number two. The paper annexed, marked A, is a copy of so much of said plan as represents township number three, in range thirteen. The schedule marked B, hereto annexed, is a copy of so much of the field notes of Kelsey as relates to the pine timber and general quality of the soil in said township.

LEVI BRADLEY.

September 30, 1843. Subscribed and sworn to, before me,
FRED. HOBBS, *Commissioner.*

[For plan see original.]

(B.)

A description of the several lots of land in township No. 3, in the 13th range, west from the east line of the State, as surveyed in 1831.

Where the contents of the lot is not mentioned, they are one mile square, and contain six hundred and forty acres each. Lot No. 1.—This lot is all of the third quality of soil, and is nearly all covered with pine timber of the first quality, estimated, after deducting all rotten and decayed timber, at 1,800,000 feet, board measure.

Lot No. 2.—Three-fourths soil third quality, residue fourth quality; estimation of merchantable timber, 1,200,000 standing, and covering most of the lot on the west side of the stream running through it from south to north, sufficiently large to float the timber down. The timber is large and generally sound. The surface of the ground is smooth, and not thickly covered with underwood, to obstruct the drawing of the timber to water with facility and ease.

Lot No. 3.—Soil all third quality for settling; estimation of merchantable timber, 600,000, mostly in the northeast corner; here is, however, a quantity of small sapling timber in the southeast part, of little value, not in this estimate.

Lot No. 4.—The soil mostly of the third quality; estimation of pine timber, 400,000 feet, merchantable, first quality, situated on the north side. The surface of this lot is in some places rough and ledgy.

Lot No. 5.—One quarter, northeast part, first quality of soil; two quarters, centre part, second quality of soil; one quarter, west part, third quality of soil. The estimation of merchantable timber, 200,000, first quality, in the northwest corner.

Lot No. 6.—Estimated to contain 430 acres, one-fourth, northwest part, soil first quality, residue second quality.

Lot No. 7.—Soil third quality; estimated to contain 800,000 feet merchantable pine timber, first quality, mostly on the northwest part of the lot.

Lot No. 8.—Soil third quality; estimation of pine timber 500,000, first quality, situated in the south part.

Lot No. 9.—About 100 acres in the northeast corner, soil first quality; one third second quality; residue third quality; estimation of pine timber 400,000, through the middle and west part, first quality.

Lot No. 10.—North half, soil first quality; residue mostly second quality; pine timber estimated at 600,000 feet, first quality, in the south and east parts.

Lot No. 11.—About 200 acres, north part, second quality of soil; residue third quality; estimate of merchantable timber 800,000, in the south and west parts.

Lot No. 12.—Soil second quality; some small sapling of little value.

Lot No. 13.—Containing 568 acres, soil third quality; the merchantable pine timber estimated 800,000 feet, first quality, in the west part mostly.

Lot No. 14.—Containing 568 acres; one-third, east side, second quality; residue third quality of soil. Estimated to have on it 450,000 merchantable pine timber, first quality.

Lot No. 15.—One-half, west side, second quality; residue third quality; pine timber estimated 500,000 feet, first quality. The lot contains 568 acres.

Lot No. 16.—Containing 568 acres; one-third, south part, second quality of soil; residue third quality; first quality of pine timber estimated at 600,000. The surface of the ground in this vicinity, from one to two miles around, is smooth and even, canting gently to the east towards Cariboo lake, and to the west towards a stream running north through the west side of the township, which I shall hereafter call Pine stream, with but few hills or steep places; the growth is in some places thick, and a part of it down; in others open and free from underwood.

Lot No. 17.—Estimated to contain, exclusive of water, 291 acres, soil third quality; timber estimated 200,000 feet, merchantable.

Lot No. 18.—Estimated to contain 576 acres, soil of the third quality; some small sapling pine of not much value, and difficult to estimate.

Lot No. 19.—Soil third quality; pine timber estimated at 750,000 feet, first quality.

Lot No. 20.—Soil, half second quality; half third quality; estimation of pine timber 900,000, first quality. The timber is mostly on the south side; the north side is a mixture of hard wood, with scattering pine trees.

Lot No. 21.—About 100 acres, north side, soil first quality; residue second and third quality. The quantity of merchantable pine timber is estimated at 1,000,000 feet, first quality.

Lot No. 22.—Soil nearly all of the third quality; estimation of merchantable timber, first quality, 1,500,000.

Lot No. 23.—Containing, by estimation, 496 acres, one-third, west part, second quality; residue third quality; pine timber estimated 350,000, first quality.

Lot No. 25.—Soil third quality; estimation of merchantable pine timber 450,000, first quality. The timber is mostly on the northwest corner, and on the east side of Pine stream.

Lot No. 26.—Soil of the third quality; estimated the quantity of pine merchantable timber 1,400,000, first quality.

Lot No. 27.—Soil mostly of the third quality; pine timber estimated at 450,000, first quality, on the north side, and in the middle of the west side.

Lot No. 28.—One-fourth, in the southeast corner, first quality; residue third quality. Pine timber on the lot estimated at 1,000,000, first quality, chiefly in the north half.

Lot No. 29.—Two-fifths, south part, soil first quality; one-fifth second, and two-fifths third quality. Pine timber estimated at 200,000, first quality.

Lot No. 30.—Estimated to contain 368 acres, soil second quality.

Lot No. 31.—Containing 670 acres, soil second quality.

Lot No. 32.—Containing 667½ acres, soil of the third quality; surface rough and ledgy; scattering pine in the centre of the lot estimated at 150,000, first quality.

Lot No. 33.—Estimated to contain 317 acres, soil of the third quality.

Lot No. 34.—Estimated to contain 657 acres. This lot is on the north and west sides of a hill; about two-thirds is of the first quality of soil, and one-third second and third quality.

Lot No. 35.—Containing 661 acres; about 200 acres of the north side is of the first quality of soil; residue second and third quality.

Lot No. 36. Estimated to contain 596 acres; about 300 acres the first quality of soil; residue second and third quality.

Defendants' interrogatories to John Towle, a witness examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2. Did you, in the spring of the year 1835, explore township No. 3, 13th range of townships west from the east line of the State of Maine? If yea, at whose request? What instructions did you receive? Were they verbal or written? If written, annex them, or a copy of them.

3. Where were you when requested to make such examination? In what and whose employ?

4. Whom did you take with you at starting to explore said tract? Whom did you engage to accompany you afterwards?

5. Did you make a report to your employer of your doings, and of the results of your examination? If so, when; what was its purport? Annex a copy, if you have one.

6. State whether or no said report was made in good faith; and whether or no the statements therein contained are true; and the opinions therein expressed were sincere.

7. State how long you were taken off your regular occupation by such exploration; what pay you received for the same; how much per day; whether or no that was more than you were receiving in your regular employment; and if more, how much, and why; and from whom you received it.

8. If you have stated that Benjamin Dyer accompanied you in that exploration, state who selected and engaged him for that purpose; where, in whose, and what employ he was at that time; and whether or no he was promised, or received, any extra pay for his services in said exploration; and if so, how much, and from whom.

9. If you have stated that John Thomas accompanied you, state where you found him; who selected and engaged him; for what purpose and for what reason you took him with you; what conversation relative to his going you had with him before he started, and what in the way to the township; what was said in relation to the pay he was to receive; what he asked, and what was promised him, fully and particularly; and where he left you on your return.

10. Did Dyer and Thomas, at the time, agree with, or differ from,

you in their estimates of the timber on the township? If they differed with you, state what the difference was.

11. Have you, at any time, purchased an interest in said township, or in the profits expected to accrue from the sale of any portion of it? If yea, state what interest, when, and of whom you purchased; what price you paid; and particularly the manner in which the payment was made.

12. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Plaintiff's cross interrogatories to John Towle, a witness examined on the part of the defendants.

First cross interrogatory. State whether or no you have been in the employment of either of the defendants during the last two years; and if so, in the employment of whom, and how long? What compensation have you received for your services per day, per month, or per year? State fully and particularly what business you have been in.

2. If in answer to the defendants' second interrogatory you state that you did explore township No. 3, range 13, as supposed in said interrogatory, then state how many days you were upon said township, making your examination of the timber, and what sections in particular you examined accurately. State how much time you spent upon each section, and whether you examined each section of said township; and, if so, how minutely. Give the results of your examination of each section in detail. State also whether you made any minutes of the amount you estimated upon each section, if so, what quantity of different kinds of timber you estimated each section to contain; and by what estimates and figures you arrived at the conclusion stated in your report to Hazen Mitchell, that "there could be no less than 150 or 200,000,000 of timber."

3. State whether you were in the employment of William Emerson and Cyrus Goss, upon township No. 1, in the tenth, or No. 1, in the eleventh range of townships, west from the east line of the State of Maine, at the time you received your instructions to go upon township No. 3, range 13th, west from the east line of the State of Maine. State what business you were engaged in at that time; and whether you had previously received any information from said Emerson and Goss, that they should wish you to go upon said township No. 3, range 13; and if so, state all they had previously said to you upon that subject, and what previous bargain had been made between you and said Emerson and Goss, or between you and said Goss in relation to your going to explore No. 3, range 13, aforesaid; and what portion of the profits you were to receive if a sale should be effected by the aid of your certificate.

If so, from whom were you to receive such portion of the profits? State fully all the conversation you ever had with said Emerson, and either of the other defendants, or with said Goss, or said Mitchell, in reference to the character of the certificate you should give of the quantity of timber upon said township.

4. State whether your certificate, dated Bangor, Saturday, 11th April, 1835, was not made at the request of William Emerson, Amos M. Roberts, and the other defendants, or by request of Cyrus Goss, and whether they or some of them requested you to insert in your certificate the statement that said township contained 150 or 200,000,000 of merchantable pine timber; and whether you did not so insert that statement of the quantity at the request of some of them, rather than from any belief that said township really contained it. If so, upon whose request was it? State whether you were not well aware that you had not examined said township sufficiently to determine the quantity of timber upon it, or upon any one section of it. State what induced you to make a comparison between this township No. 3, range 13, and the "Carriboo township," and the "Howe town.," in your certificate; whether you were not requested to make that comparison by said Emerson and some of these defendants, or said Goss; and by who of them, at the time of making said certificate at Bangor; and also what reason they gave for wishing the comparison so made.

5. If the statements referred to in the foregoing interrogatory were not inserted in your certificate, and if the comparison referred to were not made at the request of said defendants, or of some of them, state at whose request they were inserted and made, and what reasons were assigned at the time for inserting such statements, and making such comparisons in your reports and certificate aforesaid. If you voluntarily made and inserted them, why did you do so? Did you have various conversations with some of these defendants after you returned to Bangor from exploring this township; and, if so, with whom; and what did you then state to either of them, as to the manner of your exploration? What was said to you by either of them in reference to the character of the certificate you should give; and what bargain did they, or either of them, make with you as to the compensation you should receive for such certificate; and what compensation did they, or either of them, make you for your services at such exploration? State fully and particularly what you said to them in relation to the rotten timber upon said township.

6. State what conversations you had with Cyrus Goss as to the rotten timber upon said township, before giving your certificate, and whether he did not request you to make a certificate covering rotten timber as well as sound timber. State whether in your certificate, before referred to, you did not intend to include all the timber you saw upon said township, both sound and unsound. State also what proportion of the timber you considered unsound at the exploration made by you. State also what conversation you had with Hazen Mitchell in reference to the

matters inquired of in this interrogatory before giving your certificate, and what request he made in reference thereto.

7. If in answer to the defendants' sixth interrogatory you state, that your report or certificate given to Mitchell was made in good faith, and that the statements therein contained are true, then state whether you now mean to say that said township did, at the time of your report, contain 150 or 200 millions of merchantable timber. If you do not mean so to state, what has induced you to alter your opinion?

8. State whether you have been upon said township No. 3, range 13, since April, A. D. 1835. If so, how many times, and when; for what purpose; in whose employ; and at whose expense; and what you were paid for your services therein; and by whom.

9th. If, in answer to the defendants' eleventh interrogatory, you state that you did purchase an interest in said township No. 3, range 13, or in the profits expected to accrue from the sale of a portion of it, and further state that you purchased such interest of Cyrus Goss, state where you made the bargain with him for it; how much you paid for it; who was present besides you and said Goss when such bargain was made; and how soon after such interest was purchased by you said Goss paid you back the money so paid to him for such interest, or gave you some, and what, equivalent therefor. State why he so paid it back to you, and if you gave any notes to said Goss for such interest, where were they payable and paid.

10th. What sale was expected, by you and the person of whom you purchased such interest, to take place, that you were induced to hazard anything in the profits expected to accrue therefrom; and was there in fact a negotiation pending, at the time you purchased such interest in the profits, for the sale of said township. If so, by whom was it to be sold, and to whom? State the exact date when such purchase was made by you.

11th. What had been your business for ten years previous to the eighth day of June, A. D. 1835? Had you, prior to that time, engaged at all in the land speculations in Maine, or in the purchase and sale of timber townships? If so, in how many instances, and when were such purchases and sales made by you? Be particular and minute in answer to this interrogatory. State also who first suggested your taking an interest in the profits expected to accrue from the sale of this township, and why was it so suggested to you.

12th. State whether, previous to exploring said township, you had agreed with said Goss and Emerson, or Mitchell, to explore for them during the season of 1835, whenever they should require your services. If so, when did you make such bargain with them?

13th. State who employed Dyer and Thomas to aid you in that exploration of No. 3, range 13; and if you did, by whose direction and request you so employed them, and who paid them for their services; and also, if you know, what compensation they received.

14th. State whether the interrogatories put to you on the part of the complainant or defendants in this cause, or any copies thereof, have ever

been exhibited to you before giving your testimony; and if so, when, and by whom; also, whether the substance or purports thereof have ever been stated to you before giving your testimony; and if so, when and by whom.

GEO. W. COOLEY,
Solicitor for Complainant.

Answers of John Towle, a witness examined on the part of the defendants.

First. I am about forty-seven years old. I reside in Bangor, and am a farmer by occupation.

Second. I did explore No. 3, range 13, in the spring of 1835, as inquired about, at the request of Hazen Mitchell. They were by a letter written to me while in the woods; I cannot produce it; I took no care of it, and do not know where it is. Mr. Mitchell wished me to explore No. 3, range 13, and to compare it with the Cariboo and Howe townships; and to take a man with me for that purpose.

Third. I was on No. one, in the tenth, when requested to make such examination, and was in the employment of Cyrus Goss and Hazen Mitchell, scaling logs.

Fourth. I took with me at starting Captain Benjamin Dyer, and afterwards engaged John Thomas to accompany me, in making said exploration. Thomas wanted to see the land, and consented to go, taking his chance for his pay.

Fifth. I did make a report to Mitchell of my doings, and the result of my examination; it was about the first of April, 1835, or the 10th or 11th of the month; it purported that I had examined the town, and that the timber far exceeded that on the Cariboo and Howe towns for quality and quantity. I have no copy of my report.

Sixth. Said report was made in good faith. The statements therein contained are true; the opinions therein expressed were sincere.

Seventh. I should think I was taken off my regular occupation by said exploration from ten to twelve days, including the time of coming down to Bangor. My pay for the exploration was at the rate of two dollars per day, including expenses, or thirty-five dollars per month and found. I think I was paid about twenty-three dollars for my services in exploring; it was about the same I was receiving in my regular employment. I received the money of Hazen Mitchell.

Eighth. I selected and engaged Benjamin Dyer for the purpose of making the exploration with me; Dyer had charge of a team, in company with Smith and Jamreson, as I understood it, on No. 1, in range 10, at the time, and was hauling the same logs I was scaling at the time. I promised to pay him no more than two dollars per day; I don't know what he received for his services.

Ninth. I found John Thomas at the camp on the Howe township, or on No. 1, near by. I desired Thomas to go to show us the way to the line of the town, on the lake. Before I started, Thomas wanted pay for going as an explorer; I told him I could not pay him as an explorer,

unless it came out of my own pocket. Thomas said he would go, as he wanted to look out a road on to the town. After we had found the line of the town, Thomas still wanted to go with us; I told him Goss or Mitchell might pay him nine shillings or two dollars per day, but he might not get any thing; he must take his chance for it. He said he would go. I don't now remember where he left us on our return; he came down as far as the camp on the Howe township, at any rate, and either left us there, or at our camp on the Pamadunkook.

Tenth. Dyer and Thomas generally agreed with me, at the time, in my estimates of the timber on the township; I believe they did not differ from me particularly.

Eleventh. I purchased an interest in the profits expected to arise from the sale of a portion of it. I bought what could be made on half a tenth. I was to pay Goss one thousand dollars for the profits on half a tenth; which, I think, was reckoning the land at six dollars an acre. I paid said sum for the profits aforesaid, on a sale beyond the six dollars per acre, if any should accrue. Goss was under obligation to me to sell at not less than seven and a half dollars per acre, and was not to refuse that price. There was some writing about it between Goss and myself. I paid Goss the sum of one thousand dollars by an order on Hazen Mitchell, who was owing me that sum for labor.

Twelfth. I don't know as I know of any thing material, more than I have already stated.

Cross examined on the part of the complainant.

First cross. I have not been in the employment of either of these defendants during the last two or three years; I have been engaged in farming in Bangor during that time on my own account.

Second cross. We were from two to four days on the township No. 3, range 13, after we found it; I cannot say what particular sections I examined; I did not know the town was laid out into sections at the time. From an examination of a map of the town now before me, I should say we struck the east line of the township on the south shore of Lake Cariboo, and then by compass crossed the lake on the ice, and traversed what are marked on the plan as lots numbered 18, 12, parts of 6 and 11, 5, 4, 10, 3, 2, till we struck Pine stream; thence on to 8, 14, 20, 26, 27, 21, 15, and followed the stream through 16 and 17, connecting the pond with the lake. We then went down the lake, and left the township. We examined the township without regard to sections, viewing the timber as we passed along carefully as we could, walking moderately. I cannot give the result of our examination by sections. I only know that wherever we went it was well timbered. The south-east corner of the township, as we saw it from the lake, appeared to be a hard wood ridge. I have no figures to show how I came to the result of 150 to 200 millions. I came to that conclusion by travelling over the land and climbing trees, computing the number of trees on an acre, and the number of acres in the township.

Third cross. I was not in the employment of either Emerson or

Goss, at the time Mitchell requested me to explore No. 3, range 13. I was at that time employed as scaler of logs by Mitchell. I suppose Goss was concerned in the business, or supplied the teams on No. 1, range 10, whose logs I scaled. I had not previously received any information from Emerson or Goss that they should wish me to go upon No. 3, range 13; nor was there any bargain or understanding between me and said Emerson and Goss in regard to it. I never had any conversation with either of the defendants, or with Goss or Mitchell, in reference to the character of the certificate I should give of the quantity of timber upon said township.

Fourth cross. My certificate, dated Bangor, Saturday, April 11, 1835, was not made at the request of William Emerson, Amos M. Roberts, or the other defendants. I don't recollect that it was made at the request of Goss. Nor did any of them request me to insert that said township contained 150 or 200 millions of merchantable pine timber. It was at that time really my belief that said township contained that quantity of merchantable pine timber, or rather pine timber of the best quality, whether merchantable or otherwise. I was not aware that I had not examined said township sufficiently to determine the quantity of timber on it. I was perfectly satisfied with the examination. I made a comparison of the timber on No. 3, range 13, with that on the Caribou and Howe townships, by request of H. Mitchell only at the time he wrote, and requested me to explore it. I was acquainted with the Howe township before, and Mitchell requested me to cross the Caribou as I went on to No. 3, range 13, which I did. I made the comparison in my certificate because I had been requested to make it in my exploration. We crossed the Caribou in two places, and examined it as much as we could without spending too much time. No person requested me to make the comparison in my certificate; I made the certificate to comply with the letter of instructions from Mitchell.

Fifth cross. I did not insert 150 or 200 millions at the request of any one. I did not certify the comparison at the request of any one. Mitchell was absent from Bangor at the time it was made. I wrote the certificate in a letter to him, and left it with Goss, and went up river. I made the certificate for the reason that I was satisfied at the time that it was correct. I had no conversation with either of the defendants after my return, and before I made the certificate. Nothing was said to me by either of them in reference to the character of the certificate I was to give. No bargain was made with me by any one as to the compensation I was to receive for such certificate. These defendants never made me any compensation for my services in making said exploration. I don't recollect that I said anything to either of the defendants in relation to the rotten timber on the township.

Sixth cross. I have no recollection of having any conversations with Cyrus Goss as to rotten timber on the township before giving my certificate. Goss did not request me to make a certificate covering rotten timber as well as sound. I did not mean to include the refuse in

my certificate; I meant to include such as would be cut and hauled. I think a quarter part of the timber which I saw at the time of the exploration was unsound or defective. I had no conversation with Hazen Mitchell before making my certificate on the subject of the timber, or the mode of certifying my opinion. He was not at home, and I never saw him till after I made the certificate.

Seventh cross. I do not now think that there were on the township 150 to 200 millions of merchantable pine timber (as they survey here now,) at the time I explored it. I have not altered my opinion of the quantity and quality of the timber there at the time of my exploration. I think I never certified that there were 150 to 200 millions of merchantable pine timber. If I did so certify, I did not mean merchantable pine timber as they now survey it at Bangor.

Eighth cross. Yes; I was on said township again afterwards, in the spring of 1835; this is the only time. I went up to pilot two men who wanted to see the town. William Emerson employed me, and paid me, I think, from two to three dollars per day.

Ninth cross. I made him, Goss, the offer in his store in Bangor, and the bargain was there concluded; I paid Goss one thousand dollars; I don't know that any one was present when said bargain was made. It was about two years after said purchase before Goss paid me back the money, or gave me an equivalent; which was by Goss surrendering to Josiah Towle, my brother, at my request, Josiah's notes held by Goss, to the amount of seven hundred and fifty dollars. Said notes were given for the purchase money of real estate, as they told me. The money was so paid back to me, for the reason that he had neglected to sell the land when he ought to have done it. I did not give any notes to Goss for such interest.

Tenth cross. I did not know of any particular opportunity to sell the land at the time of my bargain with Goss; I supposed as land was selling at the time, the township would sell at a profit; I know of no particular negotiation going on for the sale of the land at the time; I cannot now state the exact date of said purchase.

Eleventh cross. I had been engaged in lumbering and taking care of lumber for ten years previous to the eighth day of June, 1835. Part of the time I was at work by the month. I had not prior to that time been engaged in the land speculations in Maine, or in the purchase and sale of timber townships. I first suggested my taking an interest in the profits expected to accrue from the sale of this township; it was not suggested to me by any one.

Twelfth cross. I did not agree with Emerson, Goss, or Mitchell, at any time, to explore for them whenever they should want my services.

Thirteenth cross. I employed Dyer to aid me in that exploration, and Thomas to show us the way to the line of the township. I employed Dyer by direction of Hazen Mitchell, who requested me to get a good man. I thought I could not get a better one. I don't know who paid Dyer or Thomas for their services, nor how much they were paid.

Fourteenth cross. No; I have never seen copies, nor heard the substance of the interrogatories now put to me, before I gave my deposition.

JOHN TOWLE.

Sept. 16, 1843. Subscribed and sworn, before me,

FRED. HOBBS, *Commissioner.*

Defendants' interrogatories to William H. Mills, a witness examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2. Do you know Amos M. Roberts, one of the defendants named in the title of these interrogatories?

3. When were you first appointed cashier of the Eastern Bank; when was the charter of that bank granted; when did it commence business; who was its president in June, A. D. 1835?

4. When did you take up your residence in Bangor; with what object in view, and at whose solicitation or request?

5. How did you travel to Bangor at that time? If by steam packet, state whether said Roberts was on board with you; and how often, and on what days, a steamer arrived at Bangor from the West, in the months of May and June, A. D. 1835.

6. State where you were from the last day of May to the 10th day of June, 1835, and how you were employed; where said Roberts was, and how he was employed; and fully and particularly every thing that you know in relation to his movements during that time; how often you saw him; whether or no he left Bangor; and if yea, how, and where he went, and how long he was absent on each occasion.

7. When did he, after the last day of May, 1835, first leave Bangor for Boston or Portland; and when, after said day, did he first return to Bangor in the steamer?

8. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Plaintiff's cross interrogatories to William H. Mills, a witness examined on the part of the defendants.

First cross interrogatory. If, in answer to defendants' interrogatory fifth, you state that you did go to Bangor in the spring of 1835, then state in what month you went, and on what day of the month you arrived there, and on what day of what month you entered upon your duties as cashier of the Eastern Bank. Please state whether more than one steamboat went to Bangor from Portland during the months of May and June, A. D. 1835; and if so, what were the names of such boats. State what knowledge you have that Amos M. Roberts was on board any

boat, between Portland and Bangor, from the 18th day of May to the 14th day of June, A. D. 1835, and particularly whether you recollect that said Roberts went down the Penobscot river in any boat upon a pleasure excursion during the last mentioned period; if so, where did he state to you he was going, or had been; or were you with him on any such, and if so, what excursion, and were any of his family with him on such excursion. Please state what you yourself know, or what he has at any time told you, relative to any such excursion, or to his being on board any boat during said time.

2d. Might not the said Roberts have gone on board the boat, upon its arrival in Bangor, at any time during the months of May and June, without your knowledge; and is it not very common for gentlemen in Bangor to go down and go on board the boat, upon its arrival in Bangor, to ascertain who arrived in such boat; and was not that particularly the case with land speculators in May and June, A. D. 1835; does not the said Roberts frequently go over to the Bangor house, and down to the boat upon its arrival, for the aforesaid purpose; is he not a man remarkable for his attention to such matters, especially where he has any interest at stake?

3. State whether the interrogatories put to you, on the part of the complainant or defendants, in this cause, or any copies hereof, have ever been exhibited to you before giving your testimony, and if so, when, and by whom; also, whether the substance or purport thereof have ever been stated to you, before giving your testimony; and if so, when, and by whom.

GEO. W. COOLEY,
Solicitor for the complainant.

Answers of William H. Mills, a witness examined on the part of the defendants.

To the first. I am forty years old, reside in Bangor, and am cashier of the Eastern Bank.

To the second. I do know A. M. Roberts.

To the third. I was first appointed cashier of the Eastern Bank in the spring of 1835; I think the charter of said bank was granted in March, 1835; it commenced business on the 1st day of July, 1835; Amos M. Roberts was its first president, in June, 1835.

To the fourth. I took up my residence in Bangor on the first day of June, 1835; I came here to act as cashier of the Eastern Bank, at the solicitation of A. M. Roberts.

To the fifth. I came in the steamer Bangor from Portland; A. M. Roberts was not on board with me; a steamer arrived at Bangor, I think, twice a week in June, 1835, on Sundays and Wednesdays.

To the sixth. I was in Bangor from the last day of May to the tenth day of June, 1835; I was getting ready to commence operations in the bank during that time; Roberts was in this city during the same time, and, as near as I can recollect and judge, he was about his daily avocations. I had daily intercourse with him; he was engaged, partly, in

looking after the bank building, which was being finished about that time, and was getting the bills ready; I rode with him in a chaise several times during the period inquired about; he did not leave Bangor during the time.

To the seventh. I should think it was about the middle of June, perhaps near the 20th of that month, when he left Bangor for Boston; he first returned to Bangor on one of the last days of June from Boston; he went after specie to put the bank into operation, and got here just in season to begin on the first of July, 1835; he came by steamer.

To the eighth. I don't think of any thing further.

Cross examined.

To the first cross interrogatory. I arrived at Bangor on Sunday, May 31, 1835, about nine o'clock in the evening. I entered on the duties of cashier of Eastern Bank on July 1, 1835; there was only one steamboat, to my knowledge, that came to Bangor in the months of May and June, 1835. I don't know that A. M. Roberts was on board any boat between Portland and Bangor, from the 18th of May to the 14th of June, 1835; I saw him some time about the middle of May on board the steamer Bangor, as she left the wharf in Portland for Bangor. Roberts did not go on any pleasure excursion down the Penobscot, from the first to the middle of June; I was not here in May; I was not with him on any such excursion. I know nothing of his being on board any boat during that time, on an excursion; he never told me of any such excursion.

To the second cross. He might have gone on board said boat upon its arrival at Bangor, during the month of May, because I was not here; but in June I should have known it, if he had gone on board on an excursion, for I was here. It is common for the multitude to go down to the wharf, on the arrival of the boat, but I don't know that gentlemen do often. It might have been the case with land speculators in May and June, 1835, but, as I was not one of them, I don't know so much of their habits in that respect. Roberts does not, to my knowledge, go to the Bangor house and down to the boat, upon its arrival, for that purpose; he goes to the Bangor when he pleases, not particularly on the arrival of the boat. I don't know that he is remarkable for his attention to such matters; if he had any interest depending on the arrival of the boat, I think he would look after it.

To the third cross. No. This is the first of my knowledge of the existence or substance of said interrogatories or cross interrogatories.

WILLIAM H. MILLS.

September 20, 1843, subscribed and sworn, before me,

FRED. HOBBS, *Commissioner.*

Defendants' interrogatories to George F. Marston and George A. Pierce, witnesses examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2. Are you acquainted with Amos M. Roberts, one of the defendants named in the title to these interrogatories?

3. Do you know where said Roberts was, between the 20th day of May and the 8th day of June, A. D. 1835? Did you see him; did you have any business transactions with him during that time? If yea, state on what days, and where you saw him, and what business you transacted with him.

4. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Plaintiff's cross interrogatories to George F. Marston and George A. Pierce.

First cross interrogatory. If, in answer to defendants' interrogatory third, you undertake to state where Amos M. Roberts was, between the 20th day of May and the 8th day of June, A. D. 1835, state fully and particularly how many days in succession you saw him between said 20th of May and 8th of June; and state nothing in relation thereto but what you distinctly recollect. Do not state your impressions upon the matter, but state fully the number of interviews you had with him between those dates, for what purpose you had those interviews, how long you were occupied at each interview, and particularly how many days in succession you saw said Roberts, and fully and particularly all the business you had to do with said Roberts.

2d. Have you any knowledge of Amos M. Roberts' having been on board any steamboat between Bangor and Portland, or on board any steamboat at either of those places, between the 18th day of May, A. D. 1835, and the 14th day of June in the same year? If so, state on what day, and on board what boat you knew him to be.

3d. State whether any of the interrogatories in this cause, on the part of either the complainant or defendants, have been exhibited to you before giving your testimony, or whether you have been informed as to their purport; and, if so, state by whom they were so exhibited, or by whom you were so informed.

GEO. W. COOLEY,
Solicitor for complainant.

Answers of George F. Marston, a witness produced and examined on the part of the defendants.

First. I am forty-five years old, am a trader by occupation, and reside in Bangor.

Second. I am acquainted with A. M. Roberts.

Third. I cannot state where said Roberts was during the whole of that period. On the 30th day of May, 1835, I made and executed a deed to A. M. Roberts, and acknowledged it on the 5th day of June, 1835, as by reference to said deed appears. I believe I arrived in Ban-

gor with my family, on the Tuesday evening before Saturday, the 30th day of May, 1835, and between those times I think I negotiated a bargain with Roberts for a parcel of real estate, and for which I gave him a mortgage deed on the 30th. I did the business with Roberts at Bangor, personally. I made the trade, I believe, in his store, and gave him a check, when I closed the bargain, for a thousand dollars; but whether it was on the 30th of May, or 5th of June, I cannot say.

Fourth. I know nothing further.

Cross examined.

First cross. I cannot state particularly how many days in succession I saw Roberts, between the 20th of May and 8th of June, 1835. I cannot now state the number of interviews that took place between us; our interviews were to negotiate this trade. I cannot state how long we were occupied at each interview, nor how many days I saw him in succession. I had no other business with him than to buy said real estate.

Second cross. I have not any such knowledge.

Third cross. No. They were never shewn, or made known to me by any one before testifying.

GEO. F. MARSTON.

September 22, 1843, subscribed and sworn, before me,

FRED. HOBBS,
Commissioner.

Defendants' interrogatories to Ebenezer G. Rawson, a witness produced on the part of the defendants.

1st interrogatory. What is your age, profession, and place of residence? Who was your partner in the year 1835?

2d. Do you know John Williams, formerly of Dover, N. H., and recently resident in the city of New York?

3d. Were you employed by said Williams in June, A. D. 1835, to draw up conveyances of parts of township No. 3, 13th range of townships west from the east line of the State of Maine?

4. Did you, at Bangor, on the 23d day of August, A. D. 1838, before William H. McCrillis, esq., N. H. commissioner, and at the request of said Williams, give a deposition, to be used in a case pending in a court in New Hampshire, between said Williams and Charles W. Cutter, esq.? If yea, state whether said Williams was present; who acted as his attorney; annex a copy of said deposition to your answer, and say whether or no the statements in it accord with your present recollections.

(The complainant's solicitor, G. W. Cooley, objects to interrogatory 4, as irrelevant to the matter in issue, to any copy of the deposition referred to in said interrogatory, or to any statement of the accuracy of its contents, on the ground that the same is also irrelevant, and otherwise incompetent as testimony.)

5. Did said Williams, prior to, or at the time of the taking of said deposition, have any conversations with you in relation to a difficulty

which occurred at or about the time said conveyances were prepared by you, between himself and some of the purchasers of said township, in reference to the number of acres in said township to be paid for by those purchasers? If yea, state when, and how often, and why, those conversations were had; what said Williams stated, if any thing, in reference to any deduction on account of water; and whether he made any statements with the avowed purpose of refreshing your memory; and, if so, what those statements were.

(The complainant's solicitor, G. W. Cooley, objects to interrogatory 5, and to any answers thereto, as irrelevant to the matter in issue, and otherwise utterly incompetent as testimony.)

6. State whether or no said Williams, at any time, has said or intimated to you, or in your hearing, that at the time of the sale of three-fourths of said township, in June, A. D. 1835, or whilst he held a refusal of said three-fourths, he was ignorant of the deduction, on account of water, made by the State to the first purchasers, or that he had been deceived in any way by the owners of said township; and, if yea, state what he said.

(The complainant's solicitor, G. W. Cooley, objects to interrogatory 6, and to answers thereto, as irrelevant to the matter in issue, and otherwise utterly incompetent as testimony.)

7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for the defendants.

Plaintiff's cross interrogatories to Ebenezer G. Rawson.

First cross interrogatory. State whether or no either of the defendants, and, if so, who of them, ever told you that the defendants, Norcross and Mason, refused to receive the notes of the complainant, and those of Bartlett, Cutter and Rundlett, the other grantees of said township, (given as the consideration for the sale to them of their portions of said township,) to said Emerson; and state also what reason they gave for rejecting said notes. State whether or no it was on the ground that said Emerson had deceived this complainant, and said Bartlett, Cutter, and Rundlett, as to the sum which the defendants were to receive for their portion of the township sold to this complainant, and said other grantees. State fully and particularly all that either of the defendants ever said to you upon that subject.

Second cross interrogatory. State whether or no these defendants, and, if so, who of them, ever told you that they had caused township No. 3, range 13, west from the east line of the State of Maine, to be explored, and by whom, and when; and particularly whether or no they had caused it to be explored by John Towle, John Thomas, and Benjamin Dyer; and, if so, when, and what was the nature and character

of their report, and whether they gave certificates of their exploration; and, if so, what amount of timber they were stated to certify, and whether they intended to use the same, or had used the same in the sale of said township.

Third cross interrogatory. State whether or no the interrogatories, of either complainant or defendants, or any copies thereof, have ever been exhibited to you; and, if so, by whom, and when; or whether or no the substance or purport thereof have ever been stated to you by any one before giving your testimony in this cause; and, if so, by whom, and when?

GEO. W. COOLEY,
Solicitor for complainant.

Answers of Ebenezer G. Rawson, a witness produced and examined on the part of the defendants.

First. I am thirty-nine years of age, by profession a lawyer, and reside in Bangor. John Hodgdon was my partner in 1835.

Second. I know John Williams, of Dover, N. H., very well.

Third. I was employed by John Williams to draw up conveyances of parts of township No. 3, range 13, in June, 1835.

Fourth. I gave my deposition for Williams before McCrillis, commissioner, at Williams's request, in August, 1838, I think it was, to be used in said action, if I recollect aright. Williams was present. I don't recollect who acted as his attorney. I make it a part of my answer. It is annexed, marked A. On looking at said copy, I find Jonas Cutting, esq., acted as the attorney of said Williams. The statements therein accord with my present recollection.

Fifth. Yes. Williams had a great deal of conversation, at or about the time of taking my deposition, in relation to the difficulty inquired about. These conversations between us were frequent prior to the taking of my deposition. Williams did refer to the particular cause of said difficulty, and wished me to recollect it as he stated it, which was, that no deduction was made to Cutter and others on account of water, in computing the number of acres on said township. Cutter and others had discovered that a deduction for water had been made to Williams, and insisted that it should be made to them also, which Williams refused to do, and said they should not have it on any other terms; that he did not care whether they took it on those terms or not, for he could make a better sale of it. And Williams wished me to refresh my memory as to the fact that Cutter and others knew at the time of the bargain that a deduction had been made to Williams of two or three thousand acres on account of water.

Sixth. No. Williams never said to me, or to any one in my presence, nor ever intimated, that he was ignorant that a deduction had been made on account of water by the State, while he held the refusal of said three fourths, or at any other time. On the contrary, he frequently conversed with me about it after the difficulty arose.

Seventh. I don't now recollect any thing further.

Cross examination.

To the first cross interrogatory. That statement came to my knowledge, but from what source I do not know, or now recollect. I never heard any reason from any of the defendants given for their rejecting said notes. I never heard any thing of the kind as to the ground of their refusal, as inquired about. I cannot state a word, now, that any one of them said to me about it. I do not recollect that either of them ever said any thing to me on the subject.

To the second cross. I don't know that either of the defendants ever told me that he or they had caused said township to be explored by any one, neither by John Towle, John Thomas, or Benjamin Dyer. Nor did I ever hear either of the defendants speak of the character of a report made by any one, nor whether they gave certificates of their exploration, nor the amount of timber certified; or that they had used said report or certificate in the sale of said township, or intended so to do.

To the third cross interrogatory. No, never. I had no knowledge that my deposition was wanted till to-day, nor has the substance thereof ever been stated to me by any one. I think, on reflection, that James S. Rowe, esq. did, some time ago, name to me that my deposition would be wanted in this case.

E. G. RAWSON.

Sept. 14, 1843. Subscribed and sworn, before me,
FRED. HOBBS,
Commissioner.

A.

State of New Hampshire, to Charles W. Cutter, esq., of Portsmouth, in the county of Rockingham:

You are hereby notified that one or more depositions will be taken before William H. McCrillis, esq., a commissioner for New Hampshire, and one of the justices of the peace for the county of Penobscot and State of Maine, at his office in Bangor, in said county of Penobscot, on the twenty-third day of August, instant, at ten of the clock in the forenoon, to be used in a plea of the case to be heard and tried at the court of common pleas, to be holden at Exeter, in and for said county of Rockingham, on the first Tuesday of September next, in which plea you are plaintiff and John Williams is defendant.

At which time and place you may attend and put interrogatories if you see cause.

Dated at Dover, in said county of Strafford, the eleventh day of August, A. D. 1838.

DANIEL M. CHRISTIE,
Justice of the Peace.

I, James M. Gordon, of Dover, New Hampshire, depose and say, that on the eleventh day of August, A. D. 1838, I left at the dwelling house

and last and usual place of abode of the within named Charles W. Cutter, the original notice of which the within is a true copy.

JAMES M. GORDON.

STATE OF MAINE, *York, ss:*

August 20, 1838.

Then the above named James M. Gordon made oath to the truth of the above deposition, by him subscribed. Before me,

JERE. BRADBURY,
Justice Peace.

I, Ebenezer G. Rawson, of Bangor, in the county of Penobscot, and State of Maine, of lawful age to testify, depose and say, that on the 10th day of June, A. D. 1835, I was requested by Mr. John Williams, of Dover, in the State of New Hampshire, to write separate mortgage deeds from Ichabod Bartlett, Charles W. Cutter, John T. Goddard, and Edward Rundlett, of their respective parts in township No. 3, range thirteen, in Somerset county, State of Maine, namely, of one-tenth of said township from said Bartlett, Cutter, Rundlett, and Goddard, each, to secure the payment of their several notes, which were to be given by them to William Emerson, of said Bangor, to secure the purchase money for their said several tenth parts; the said Emerson and others, as I understood, having originally purchased of said State, and not having taken deeds to themselves, he, as agent for his associates and himself, directed to whom the said State should convey, and had authorized the State's agent so to do. I accordingly commenced writing said deeds, having said Bartlett, Cutter, Rundlett, and Goddard's notes before me, to be described in their said mortgage deeds to said Emerson, and had partly completed them, when said Williams came into my room, at the Bangor house, where I was writing the said deeds, and requested me to suspend all further writings, saying that the purchasers were dissatisfied; that he, said Williams, wanted me to hand him the notes, that he might deliver them up to them. I then delivered to said Williams said notes, and he left my room; and after being absent a few minutes, returned, and informed me that they had left the house, and requested me to take back the notes, and deliver them up to them when I saw them. This was about eight or nine o'clock in the evening. Mr. Cutter subsequently, either that night or the next morning, called, and inquired of me if said Williams had delivered the notes to me to be deliyered up to them; and I informed him that he had, but he, said Cutter, made no demand for them. The next morning, about nine o'clock, said Williams came again into my room, in company with said Cutter, Rundlett, Bartlett and Goddard, and perhaps others, when considerable conversation was had between them, relating to the difficulty and dispute which had arisen the preceding evening, in regard to the deduction for land covered with water. It was stated by some one of them, in the presence of all, that they had examined the records and plans in the land office, and had ascertained that said township contained the

usual number of acres, and had been assigned, by the Commonwealth of Massachusetts, to Maine, as a township, six miles square, and had also ascertained the relative proportion of land, and land covered with water, and what had been deducted to said Williams (as aforesaid) and which said Williams had refused to deduct to them, and they then were willing and satisfied to take the land of said Williams, and receive the conveyances to them of their respective interest in said township, agreeably to the bond, without any deduction for land covered with water, and the writings accordingly executed and delivered in my presence. The writings were closed, as I understood, according to the tenor and condition of the bond from said Emerson to said Williams.

Question by Jonas Cutting, esq., counsel for defendant. Was any thing said, at any time, in your hearing, during the negotiation, by Bartlett, or either of his associates, about said Williams acting as their agent? If so, what?

Answer. Nothing was said about Williams being their agent by Bartlett or either of his associates, or any thing said from which I could possibly draw such an inference.

E. G. RAWSON.

STATE OF MAINE, *Penobscot, ss:*

On the twenty-third day of August, in the year of our Lord one thousand eight hundred and thirty-eight, Ebenezer G. Rawson, above named, personally appeared before me, and after being duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, subscribed and made oath to the foregoing deposition; and said deposition was reduced to writing by me, and was taken at the request of John Williams, of Dover, in the county of Strafford, and State of New Hampshire, gentleman, to be used in a plea of the case, to be heard and tried at the court of common pleas, to be holden at Exeter, in and for the county of Rockingham, on the first Tuesday of September next, wherein the said John Williams, of Dover, in the county of Strafford, and State of New Hampshire, gentleman, is defendant, and Charles W. Cutter, of Portsmouth, in said county of Rockingham aforesaid, is plaintiff. The said Charles W. Cutter, having been duly notified, was not present and did not object. The said defendant living more than ten miles from the place of trial, is the cause of taking this deposition. Notice to party, and taking deposition, $3; deponent's fees, 54 cts.; notice to deponent, 29 cts.

WILLIAM H. McCRILLIS,
New Hampshire commissioner.

Examined and allowed by me.

WILLIAM H. McCRILLIS.

I certify that the foregoing is a true copy of the original deposition on file in my office.

Witness my hand and the seal of our court of common pleas, for
[L. S.] the county of Rockingham, and State of New Hampshire, this eleventh day of January, A. D. 1843.

J. B. HOITT, *Clerk.*

UNITED STATES OF AMERICA,
Maine district, first circuit, ss:

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in [L. S.] the year of our Lord one thousand eight hundred and forty-three, to Joseph Carr, junior, of Houlton, in said Maine district, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of John Hodgdon, a witness to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is complainant, in equity, against William Emerson and others, defendants; and to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and, while present before you, to examine carefully, on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by said witness in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this ninth day of June, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

Defendants' interrogatories to John Hodgdon, a witness produced and examined on the part of the defendants.

1st interrogatory. Please state your occupation and place of residence.

2. Do you know the parties, complainant and defendants, named in the title to these interrogatories?

3. Where did you reside in the year 1835? Who was your partner in business at that time?

4. Were you land agent of the State of Maine in that year?

5. Did you negotiate a sale of township No. 3, in the 13th range of townships west from the east line of the State, to these defendants? If yea, state the terms of that sale, the price per acre, the number of acres paid for; whether there was any deduction for water; and, if yea, whether such was usual; and if not usual, why it was made in that case, fully and particularly.

6. Had there been, prior to said sale, a survey of said township made under the authority of the land agent? If yea, when; by whom; and what report was made relative to the timber on it?

7. To whom did you convey said tract? When did you convey it? By whose directions; and what instructions did Mr. Emerson or any other of these defendants give you in relation to such conveyance?

8. Did John Williams, then of Dover, N. H., give any directions, or make any request in relation to such conveyance or conveyances? If yea, state what that request was, and what reason (if any) he assigned for making it; and all the conversation between you and the said Williams on the subject, with time and place, fully and particularly; and also what description of the premises you inserted in such conveyance or conveyances.

9. Did any of the grantees, named in such conveyances, in June, A. D. 1835, prior to, or about the time of, the execution of said conveyances, call on you at the land office in Bangor? If yea, state who; what inquiries (if any) were made relative to this township; whether or no there were, at that time, in said land office, a map or plan of said township, showing the sizes of the lots, and the quantities of land and water respectively; and a report of the surveyor in relation to the quantity of timber on it; and, if so, whether or no said plan and report were open to the inspection of every one; and whether or no said grantees, or any of them, did inspect said plan or report; and if you have stated that this complainant was there at that time, state what his business was there; whether or no he had any except such as related to said township; and fully and particularly all that transpired there, in his presence and hearing, relative to this township. (The plaintiff's solicitor objects to the foregoing interrogatory, except so far as it relates to this complainant, and to matter which transpired before the conveyance.)

10. What was the character of the estimates of timber made by State surveyors, prior to the year 1835? Did those estimates exceed or fall short of subsequently ascertained quantities? State fully, and also the opinion that generally prevailed in that year, relative to the correctness of different estimates. (The plaintiff's solicitor objects to the foregoing interrogatory.)

11. How does the price per acre, paid by these defendants for this tract, compare with the prices before paid to the State for lands sold by the township? Give a general statement of the prices paid to the State, at different times, for timber land sold by the township; and if this differs from the average, state how, and why, and your reasons for fixing the price you did. (The plaintiff's solicitor objects to the foregoing interrogatory.)

12. What was the reputation of this township, in the market, at the time of its purchase by these defendants, and up to the time of its sale by them? (The plaintiff's solicitor objects to the foregoing interrogatory.)

13. On what day in June, 1835, was the public land sale by the State?

14. State any conversation which you had with these parties, or any of them, at the time of their purchasing, relative to their views or mo-

tives in making such purchase. (The plaintiff's solicitor objects to the foregoing interrogatory.)

15. Taking the report of Joseph L. Kelsey to the land office to be correct in its estimate of the quantity of timber on No. 3, 13th range, how long a time, in your opinion, would be requisite for two explorers, with four men to assist them, to make a thorough examination of the timber on that township; "exploring each lot by itself, travelling across the same at such distance from each other as to see all the timber, noting the contents of each tree" as they "passed it," so as to be able to estimate the whole amount of merchantable pine timber "on it, to the minute accuracy of a fractional part of a hundred feet?" Please state fully your opinion, and your reasons for it—your knowledge and means of knowledge on the subject. (The plaintiff's solicitor objects to the foregoing interrogatory.)

16. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination in the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAMES S. ROWE,
Solicitor for defendants.

Received and filed June 8, 1843.

Plaintiff's cross interrogatories to John Hodgdon.

1. If, in answer to defendants' second interrogatory, you state that you do know the complainant, *state when* and where you first saw and became acquainted with him.

2. If, in answer to defendants' fifth interrogatory, you state that you did negotiate a sale of township No. 3, in 13th range of townships west from the east line of the State of Maine, to these defendants; and, if you also state the terms of that sale, *then state* whether you ever, before or since, in your capacity of land agent, made any deduction in the sale of a township from the price thereof on account of the water contained in such township; if so, in reference to what township was it done?

3. If, in answer to defendants' seventh interrogatory, you state that you did convey said tract, state whether you were requested by William Emerson, before conveying the same, to convey according to the directions of John Williams, of Dover, New Hampshire; and, if so, what reason said Emerson assigned at the time for wishing you to conform to the directions of said Williams.

4. If, in answer to interrogatory eighth of defendants, you state that said Williams desired any thing peculiar in the description of the township to be by you inserted in the deed to this complainant, state whether, by such peculiarity, he desired to conceal any fact or circumstance relating to said township from complainant.

5. State whether or no either of the defendants, and, if so, who of

them, ever told you that the defendants, Norcross and Mason, refused to receive the notes of the complainant, and those of Bartlett, Cutter, and Rundlett, the other grantees of said township, given (as the consideration for the sale to them of their portions of said township) to said Emerson, and state, also, what reason they gave for rejecting said notes. State whether or no it was not on the ground that said Emerson had deceived this complainant, and said Bartlett, Cutter, and Rundlett, as to the sum which the defendants were to receive for the portion of the township sold to this complainant and said other grantees. State fully and particularly all that either of the defendants ever said to you upon that subject.

6. State at what time the defendants paid you the money which was the consideration for your agreement to convey said township, and at what time they gave their notes for the same; and whether before or after the conveyance to the complainant, and to the other aforesaid grantees.

7. State whether or no these defendants, and, if so, who of them, ever told you that they had caused said township to be explored, and by whom and when, and particularly whether or no they had caused it to be explored by John Towle, John Thomas, and Benjamin Dyer; and, if so, when, and what was the nature and character of their report, and whether they gave certificates of this exploration; and, if so, what amount of timber they were stated to certify, and whether they intended to use the same, or had used the same, in the sale of said township.

8. State whether or no either of the defendants, and, if so, who of them, ever told you that Cyrus Goss, of Bangor, the brother-in-law of William Emerson, ever acted as their agent, in conjunction with John Williams, in the sale of said township, or in the procurement of the aforesaid certificate.

9. State whether or no interrogatories, or any copies thereof, of either complainants or defendants, have ever been exhibited to you; and, if so, by whom and when; or whether or no the substance or purport thereof have ever been stated to you by any one before giving your testimony in this cause; and, if so, by whom and when; and whether or no the substance or purport thereof have ever been stated to you by any one before giving your testimony in this cause; and, if so, by whom and when.

GEO. W. COOLEY,
Solicitor for complainant.

Received and filed June 8, 1843.

Answers of John Hodgdon, a witness produced and examined on the part of the defendants.

Answer to the first interrogatory. I am a lawyer, and reside in Houlton.

Answer to the second interrogatory. I know the complainant by sight,

but have no personal acquaintance with him. I am well acquainted with all the defendants.

Answer to the third interrogatory. In Bangor. E. Gilman Rawson.

Answer to the fourth interrogatory. I was.

Answer to the fifth interrogatory. I did negotiate a sale of said township to said defendants at three dollars and twenty-five cents per acre, one-third down, the balance in one and two years, with interest annually. Apart from the records of the land office, I cannot state precisely, but a little short of twenty thousand; there was deduction for water; in sales of lotted townships deduction is made, and not otherwise; this township had been lotted, and was sold in lots by the surveyor's return. The surveyors, when they lot townships, do not include water, but survey around them.

Answer to the sixth interrogatory. There had been a survey of said township, under the authority of Daniel Rose, land agent; I cannot say certain, but think in the year 1832, by Joseph L. Kelsey. The report was about eighteen millions of first quality of merchantable pine timber, and some saplings, which were not considered of much account.

Answer to the seventh interrogatory. I conveyed a part, I think about three-quarters, to Cyrus Goss, John Williams, John Doggett, Charles W. Cutter, Edward Rundlett, Ichabod Bartlett. The above three-quarters I conveyed in June, 1835. Subsequently, in the fall of 1837, I conveyed the other quarter to William Emerson. I made the sale at Bangor, when the books of the land office were at Augusta; took their money and notes, and gave them a writing, the fact of payment, and that they were entitled to a deed on demand; this writing was brought to me by William Emerson, accompanied by John Williams, about the eleventh or twelfth of June, 1835. Mr. Emerson told me that he had sold a certain portion of the town, I think three-quarters, to John Williams, the individual then with him, and that I might convey that account according to Mr. Williams's direction, and it should be endorsed on the back of the writing which he held. I did convey, not in common and undivided, but in severalty, to the individuals above named, according to the directions of said Williams. I had no instructions, except as above described.

Answer to the eighth interrogatory. Williams came into the land office the same day above referred to, or the next day after, and gave me the names of the individuals to whom to convey, and the proportions to be conveyed; he asked me, in conversing about the deed, whether I could not deed it as a township, instead of deeding it by lots; he said that a township would sell better than lots, and if I merely described it as so many lots, people would not know whether it was a full township, except by his representations; he was very anxious that it should appear in the deed that it was an entire township. I told him I sold under the settling law, and must convey by lot; but that if it would do him any good, I could add, embracing all of number three in the thirteenth range, assigned to Maine by Massachusetts, as a township

six miles square, making the usual reservations for public uses; he then said that he thought that would answer his purpose, as it was material to him that the deed should show that it was a whole township; he then told me to hand the deeds, when executed, to my partner, Mr. Rawson, which I did. The description was lots from one to thirty-six, inclusive, embracing all of number three in thirteenth range, assigned to Maine by Massachusetts, as a township six miles square, reserving therefrom one thousand acres for public uses.

Answer to the ninth interrogatory. They did, I think, all of them, except Cyrus Goss, but not together. Williams called by himself, and I think also in company with Mr. Doggett. I am sure Doggett was there; either Bartlett and Goddard, or Bartlett and Rundlett, called together. I exhibited to them the plan and field notes returned by Kelsey; the plan showed the amount of water, and the number of lots; and, I think, the number of acres in each lot was marked in figures upon it. The field notes gave the number of acres in each lot, and the amount of timber on each lot, and a particular description of every lot on the township. They were in the office for some time, examined them, and had some conversation with me relating to them, the purport of which I do not now recollect. The records of the office also shewed my sale to the defendants, the number of acres paid for, and the price paid per acre. None of the grantees had at that time, to my knowledge, any other business than to examine the plans and records in relation to this township. I do not recollect, for a certainty, that the complainant called at the office more than once, and that was the day after I had executed the deeds; his business there was to examine the records, and inquire about the township. The records and plans were open to the inspection of every one. There was a clerk in the office, who was always ready to give any information that was required, and the conversation, of the books and plans, were more commonly with him than with me; and I cannot undertake to state more definitely the conversation had while Doggett was in the office, nor how many of the grantees were present.

Answer to the tenth interrogatory. The estimate made by the State surveyors, prior to 1835, generally fell short of the actual quantity, but there were some exceptions to the rule; the opinion generally prevailed, in 1835, that the estimates made previous to that time were far too small.

Answer to the eleventh interrogatory. This price was higher than any township had been sold for by the State prior to that time. Lands, up to 1832, or '33, had generally fluctuated from ten to thirty or forty cents; from that period, to 1835, they were sold from one to two and two and a half dollars per acre. The report of the surveyor of this township was more favorable than any that had ever been sold, and I supposed it of greater value than any township that had ever been put into the market; in addition to this, lands at that time were rising with great rapidity. I supposed, considering the quality of the land, and the market price, that the price at which I sold was the fair value.

Answer to the twelfth interrogatory. It had the reputation of being the best township in the State.

Answer to the thirteenth interrogatory. There were two sales in June, 1835; one on the tenth and one on the eleventh.

Answer to the fourteenth interrogatory. At the time of the purchase I had a conversation, at the office of Hodgdon and Rawson, in Bangor, with two of the defendants, Roberts and Farrar, in which they discussed with each other, and me, their inducements to make the purchase; or rather Roberts was setting the inducements to the others to purchase; he said that the State estimates, made so long ago as this survey was made, usually fell short; that Kelsey was always very cautious in his estimates; that he had never seen this, but, from his knowledge of Kelsey's reports, and the general reputation of the township, he had no doubt but that it was a first rate timbered tract; that timbered lands were very rapidly rising; that there was surplus capital in the large cities, which the holders were desirous of investing in eastern lands, and, if they did not wish to keep it, or operate upon it, a few months rise in the timber lands would enable them to sell it at a large profit; that Mr. Farrar at that time, and Mr Norcross subsequently, on the same evening, fell into the same views, and purchased with the view, as they assured me and one another, of selling. I do not know that I had any, or heard any conversation with Mr. Emerson or Mason, until after the sale.

Answer to the fifteenth interrogatory. About three months; I have examined timber lands some myself, for the purpose of estimating the quantity and quality, and have employed others in that capacity, when I was land agent of Maine; in the year 1834 Mr. Coffin, land agent of Massachusetts, and myself, sent three commissioners, all experienced in exploring, with suitable assistants, to make up a report to us of the timber on township number nine, in the sixth range; they started, according to my best knowledge and recollection, in the early part of September, and were engaged all the autumn, until snow came, in finishing it; and the examination required by them was not so critical as the one contemplated in the question.

Answer to the sixteenth interrogatory. I think of nothing, unless it may be material to state more definitely the conversations which took place at the time of sale. Roberts, in conversation with Farrar, at the time referred to in my answer to the fourteenth interrogatory, went into an estimate of the extreme loss which could possibly be made upon it, in case they did not sell it, which he put at twenty thousand dollars; and then he went into an estimate, as to the profits which they might derive from the rise of the land, which he estimated at sixty thousand dollars, with a view to induce him *to induce him* to come into the purchase as a matter of speculation, as they would buy an article of merchandize.

Answer to plaintiff's cross interrogatories.

Answer to the first cross interrogatory. The first time I ever saw the

complainant was when he called at the land office, in Bangor, in reference to this township.

Answer to the second cross interrogatory. All sales that I ever made by lots, under the settling law of 1831, were made by lots, estimating them at the surveyor's return; of course I received no pay for the water; I never made any deductions at any time, in my capacity of land agent, on account of water.

Answer to the third cross interrogatory. My answer to the seventh direct interrogatory is all that I can say in answer to this.

Answer to the fourth cross interrogatory. I cannot now more particularly describe the conversation than I have done in my answer to the eighth direct interrogatory; he did not, to my best recollection, say anything other than what I have before stated.

Answer to the fifth cross interrogatory. I do not now recollect of having any conversation with any person upon that subject except Mr. Emerson; he told me that Norcross and Mason made some objections to the sufficiency of the notes, or rather to the security for the notes; I do not recollect that they ever assigned any other reason, than that they were not so well secured as they should have been; whose notes were offered to them I do not know, whether the complainant's, or some other; it was not on the ground of deception on the part of Mr. Emerson towards any one, that ever I understood; I do not recollect whether Mr. Emerson stated specifically the ground of objection.

Answer to the sixth cross interrogatory. The books of the land office will show the time they paid the money, and what time they gave their notes; I cannot now state the precise time, but it was two or three months before the conveyance to the complainant.

Answer to the seventh cross interrogatory. I never saw any exploration, and I do not recollect of hearing either of the defendants say any thing about any exploration that had ever been made, other than that of Kelsey's; I heard a rumor, but do not know where it came from, that some person who had a bond of it from Mr. Emerson had had it explored, but do not know who the individual was, nor ever heard any of the defendants say any thing about such an exploration.

Answer to the eighth cross interrogatory. While at Bangor, in March last, James S. Rowe came to my room, at the Bangor house, and told me that he expected to want my deposition in this case, and had some conversation with me as to the facts in the case; I do not think he exhibited to me any interrogatories, or any copies, but I have an impression he stated to me that they should call my attention to certain facts, and he wished me to procure minutes from the land office as to names, dates, and proceedings, in relation to the same, so that I could have my deposition taken at Houlton, if I was not coming down to Bangor; he mentioned to me some of the leading points to which my attention would be called; I do not think that the defendants, or any other person, ever gave me any intimation as to the nature of any of the questions to be proposed.

JOHN HODGDON.

AROOSTOOK, *ss:*

On this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty-three, I caused the above named John Hodgdon to be produced before me, and being first duly cautioned and sworn to testify the whole truth, I took his examination, and reduced his testimony to writing, and caused the same to be subscribed in my presence; and the same, so taken and subscribed, together with the commission, is herewith returned to the circuit court to be holden at Portland on the first day of October next.

JOSEPH CARR, JUN'R,
Commissioner.

UNITED STATES OF AMERICA,
Maine district, ss. First circuit.

The circuit court of the United States, begun and holden at Wiscasset, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty-two.

[L. S.]

To Frederick Hobbs and Henry Warren, both of Bangor, esquires, or to either of them, respectively:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Samuel Sewall and Elbridge Moore, witnesses to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is plaintiff in equity, and William Emerson and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the eighth day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

UNITED STATES, *District of Maine, ss:*

By virtue of the within commission to me directed, I have caused the said Samuel Sewall and Elbridge Moore to be brought before me, and each witness, while before me, and apart from all others, was care-

fully examined, on oath, touching the premises, and having taken his examination, his testimony, in answer to said interrogatories, was reduced to writing by me, and each witness subscribed the same in my presence. The execution of this commission, therefore, appears in the depositions of Samuel Sewall and Elbridge Moore, identified by my signatures.

FRED. HOBBS, *Commissioner.*

Defendants' interrogatories to Samuel Sewall and Elbridge Moore, witnesses produced and examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2. Were you engaged in exploring township No. 3, 13th range of townships west from the east line of the State of Maine, in company with Messrs. Levenseller and Farnsworth, commissioners on the part of the State, in the year 1842? If yea, state who employed you, and when; who was employed (if any one) to accompany you; and when and where you first met him.

3. What reasons were assigned by your employer for sending you on to that township, and what instructions were given you by him? State whether or no you were directed to join said commissioners, and if so, where; what reasons you were to give for joining them; what purpose of your employer you were to endeavor to accomplish, and by what means, fully and particularly.

4. Where did you join the commissioners; which party arrived at the place of meeting first, and how long before the other? State the conversation you and your companion had with the commissioners in reference to your joining them.

5. Did you accompany said commissioners to the township; how long did you continue with them—till the exploration was finished, or for a shorter time; did you act as assistants to them in making said exploration; if yea, who besides you two acted as assistants; what was the whole number of your party?

6. State the manner in which this exploration was made; and if you say that the party were in the habit of taking stations equi-distant from each other on the line of a section, for the purpose of crossing it in parallel courses, state what distance apart those stations were; how many times you crossed a section in that manner to explore it all; whether or no, in crossing, the different members of the party preserved parallel lines; and, if not, how near they approached, and how far they wandered from each other; whether or no any of them would get on to the lines of others, or so far from them as to be out of hearing. State fully.

7. State whether this township is lightly or heavily wooded; whether the underbrush is thick or spare; whether travelling in the woods was easy or difficult; how far from one a man could be seen, and how far the trunk of a tree.

8. Is it not necessary, in order to estimate timber accurately, to go to and examine each tree?

9. How large a portion of the pine trees standing on the sections explored at that time, do you think, were so visited and examined?

10. Is the surface of this township level or hilly, even or broken? Describe it.

11. Do, or not, such inequalities of surface as exist on this township often conceal timber from the view of explorers? State your opinion, and the experience on which it is founded; and whether or no timber was, probably, so hidden here from your party.

12. State whether or no you and your companion, who was in the service of the same employer, kept minutes of your estimates when exploring; and, if yea, whether or no those minutes were received by the commissioners as evidence of timber on the parts assigned to you and him for exploration, and were added in with the estimates of the rest of the party to make up the sum total; and, if yea, how often they were so added in; and whether or no any other estimates were made of the timber on the parts explored by you and him.

13. Were you or not, when on this exploration, faithful to your employer? Did you or not obey his instructions? Did you or not endeavor to have a low estimate made of the timber? Were you or not in the habit of conversing with the commissioners and their assistants in the camp, and in the woods, with a view to the attainment of that object? Describe your conduct, and that of your companion, in this respect; and state whether or no, in consequence of any thing said or done by either of you, either of the commissioners, or their assistants, altered his estimates, at any time, or left out of them any timber that should have been included.

14. Were or not the commissioners experienced and skilful judges of timber and timber lands? How were their assistants, Spaulding and young Farnsworth, in this respect? State the character of each of them; and whether or no it was a difficult matter to deceive them; and any facts that tend to show the skill, or want of skill, in any of them; and give instances, if you recollect any, of any experiments made by you or your companion to test the skill of any of them.

15. State whether or no these men were all fitted, by previous habits, to endure the fatigues of such an exploration, or to find their way in the woods without a guide; state fully.

16. State whether or no the commissioners, and those employed by them, were in the habit of climbing to see where the timber was; and by whom the climbing was generally done.

17. How long were you on the township? During what part of the time were the party prevented from exploring by the weather? At what time in the morning did the labor of exploring commence, and at what time in the afternoon did it cease?

18. Were there any sections not explored at all? If yea, name them. Were sections numbered 7, 8, 9, 17, 23, 25, and 33, wholly explored? If not, state what parts were left unexplored. Describe fully the explorations made in Nos. 6, 12, 17, 29, 31, respectively.

19. Describe the exploration of No. 11. State how that differed (if at all) from the explorations of other sections.

20. Was the company, for a few of the last days of your stay on the township, divided into two exploring parties? If yea, state of whom each party consisted.

21. How long a time, in your opinion, would it take eight competent men to make such an exploration of this township, as would be necessary in order to obtain a fair estimate of the quantity of merchantable pine timber on it? State fully your views on this subject.

22. What confidence have you in the report and estimates of these commissioners? Do you, or not, believe that there is much more merchantable pine timber on the township than they have reported?

23. How long have you been engaged in the lumber business and in exploring? State how extensive your knowledge is of the timber lands of Maine, how many townships you have explored, in full or in part, and on what waters they are situated.

24. How will the pine timber on this No. 3, 13 range, compare in quantity with the timber on other townships? Have you, or not, ever seen a greater quantity on any township? If yea, name the township; and how will it compare, in quality, with that on other timber townships? State fully.

25. How did you and your companion live when on this township; apart by yourselves, or with the commissioners? Who furnished you with your provisions?

26. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination in the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed April 27, 1843.

Plaintiff's cross interrogatories to Samuel Sewall and Elbridge Moore.

First cross interrogatory. State whether any of these defendants, and if so, who of them, ever had any conversation with you in reference to the exploration by you of No. 3, 13th range of townships west from the east line of the State of Maine, before you went upon said township for the purpose of exploring the same. State fully and particularly what that conversation was. State whether they, or either of them, gave you any directions as to the manner of exploring the same; and, if so, state what such directions were, and by whom the same were given. State whether either of said defendants, and if so, who of them, agreed with you before you went upon said township, to pay you any wages or compensation for the services you should perform in exploring the same. State whether either, and if so, who of them, ever did pay you any wages or compensation for your services in exploring said township. State whether, at the suggestion of either of them, and if so, at the suggestion of whom, you left with an attorney a bill for your services in exploring said township, against John Doggett, of Boston, and what di-

rections you gave said attorney in reference to the collection of the same, and whether such directions were given at the suggestion of either of the defendants; and if so, at the suggestion of whom. State whether, in fact, you had been paid for your services before you made such charges against the complainant, and if so, by whom you were so paid. State whether either of the defendants, and if so, who of them, told you his object in getting you to make out your bill against the complainant for collection. Be minute in your statements, as to all that was said relative thereto by either of said defendants.

Second cross interrogatory. Have you been in the employment of either of said defendants, and if so, in whose employment, since you went upon said township to explore the same; and how long have you been in the employment of said defendants, or either of them; and in what business, and when, and what compensation have you received therefor? State particularly whether you have been in the employment of Amos M. Roberts during the past lumbering season; whether you are now in his employment, or in the employment of him and others; and if so, in whose, and what daily compensation you are receiving for your services, and in what business and where.

Third cross interrogatory. State whether Amos M. Roberts, or either of the other defendants, and if so, who of them, has had frequent interviews with you in reference to the testimony which you could give in this cause. State fully and particularly, as well as you can recollect, what passed at these interviews. State whether a person, skilful and practised in the exploring of townships, may not, at some distance from a tree, by an observation of the size and height of a tree, determine its contents, so far as to be considered accurate for all practical purposes. Are not estimates founded on such examination usually relied upon by lumbermen, and persons desirous of purchasing townships? Do not explorers usually estimate pine timber in that manner? And do they not rely upon such estimates themselves, as furnishing evidence sufficiently accurate, as to the quantity of pine timber upon a township, for all practical purposes of sale, or in determining the advantages and disadvantages of lumbering upon a tract or township so explored? Have you ever known a township explored, either for purposes of sale, or for the purpose of ascertaining the advantages of lumbering thereon, where each tree was visited and measured for the purpose of determining the quantity of timber upon the township or tract? If so, state when and by whom it was so explored.

Fourth cross interrogatory. How do explorers determine whether a pine tree is defective? Are there not excrescences upon the bark or surface of defective pine trees, usually denominated "conchos" by explorers and lumbermen, which indicate that the tree is internally defective; and do they not, from an observation of such excrescences, judge whether a tree is wholly or partially unsound, so far as all use of the same for lumber is concerned; and do they not estimate the same accordingly? What are the other indications of defect by which explorers and lumbermen are governed in determining the valuable contents of a pine tree?

Fifth cross interrogatory. State whether, in your estimates of the quantity of pine timber on this township, which you made in company with the commissioners for the State of Maine, you reckoned as sound all trees where there were none of the usual apparent indications of defect. State whether you, or the commissioners, or any one in your company, cut down any pine trees, apparently sound and free from defect, which, however, were found on examination to be wholly or mostly rotten, and unfit for all use as lumber. State whether such trees were of that description which is usually called *timber pine* or *pumpkin pine*, and whether most of the pine growth upon said township is not of *timber* or *pumpkin pine*. State whether most of the rotten pine timber upon townships is not of timber or pumpkin pine; and state whether sapling pine timber is not usually free from defect.

Sixth cross interrogatory. If, in answer to the defendant's interrogatory thirteenth, you state that you did endeavor to have a low estimate made of the timber, do you mean to say that you endeavored to have an estimate made lower than what was true? If so, state how you endeavored to accomplish it, and in how many instances; and if in answer to the said interrogatory you state that either of the commissioners, or their assistants, altered their estimates at any time, or left out of them any timber which should have been included, in consequence of any thing said or done by either of you, then state in how many instances either of the commissioners or of their assistants altered their estimates, and what timber they then left out that should have been included; and who of them so altered his estimates, or left out timber that should have been included.

Seventh cross interrogatory. If in answer to the defendant's interrogatory fourteenth you state that it was not a difficult matter to deceive the commissioners or their assistants, state whether you deliberately undertook to deceive them, or either of them; and if so, how, and by what means, and in how many instances, and whether you succeeded in deceiving them, or either of them; and if so, who of them were so deceived, and in how many instances, and by what means. If in answer to that interrogatory you give instances of any experiments made by you, or either of you, to test the skill of either of the commissioners or their assistants, state upon whom of them you made such experiments, and what means you used to test their skill, and how your experiment succeeded, and by what facts you were satisfied of such success. State what means you had of knowing whether the commissioners, or their assistants, were fitted by their previous habits to endure the fatigues of such an exploration, or to find their way in the woods without a guide. State fully what knowledge you had of their previous habits at all. Had you ever been with either of them before in exploring; and if so, when was it, and upon what township?

Eighth cross interrogatory. If you state, in answer to the defendant's thirteenth interrogatory, that you were, when engaged in this exploration, faithful to your employer, state whom you mean to designate as your employer; and if you state that you did obey his instructions,

state what those instructions were, who gave them to you, and whether they were verbal or written instructions; and if in writing, then annex a copy to your answers if they are now in your possession; if otherwise, state who has them. State whether either of these defendants had any knowledge of those instructions before you went upon said township; and if so, which of them.

Ninth cross interrogatory. If you state, in answer to the defendant's eighteenth interrogatory, that sections of that township were not explored at all, state why they were not explored, and what reasons were given by the commissioners, or by yourselves, at the time, for not exploring the same. State why sections 7, 8, 9, 17, 23, 25, were not wholly explored; what reasons were given at the time for not exploring parts thereof, and by whom the reasons were so given. If you describe the explorations made in sections 6, 12, 17, 29, and 31, state why said sections were so explored, what reasons were given at the time, and by whom they were given, for so exploring the same. If you describe the exploration of No. 11, state why said exploration differed from the exploration of the other sections, if it did differ at all.

Tenth cross interrogatory. If you state, in answer to the defendant's twentieth interrogatory, that the company, for a few of the last days of your stay upon the township, were divided into two exploring parties, state why they were so divided, and how many days they were so divided. If you state how long it would take eight competent men to explore this township to obtain a fair estimate of the quantity of merchantable pine timber upon it, state fully upon what facts or circumstances you found your opinion as to the length of time it would take so to explore said township.

Eleventh cross interrogatory. Did you or not state to the commissioners that you concurred in the report and estimate they made of the pine timber on said township; and if you state in answer to the defendants' twenty-second interrogatory that you believe that there is much more merchantable pine timber upon the township than the commissioners have reported, state what reasons you have for believing so. State how much, in your judgment, the quantity of merchantable pine timber upon that township exceeds the quantity reported by the commissioners. State fully what your judgment and belief is as to the quantity of merchantable pine timber upon that township.

Twelfth cross interrogatory. State whether you have been upon said township during the past autumn and winter, or at any time during this spring; if so, in what capacity, in whose employment, how long you were there, who paid you for your services, and what compensation did you receive therefor. State whether you have ever been upon said township since you were on with the commissioners.

Twelfth cross interrogatory. State whether any of the interrogatories, relating to this case, on the part either of complainant or defendants, have been exhibited to you at any time; and if so, state at what time, where, and by whom they were so exhibited. State also whether you have seen any copy or copies of the same, and whether the substance

or purport of them has been stated to you, or in any way brought to your knowledge, at any time, or by any person whatever; and if so, where, when, and by whom was such copy shown to you, or such substance and purport so stated.

GEORGE W. COOLEY,
Solicitor for complainant.

Received and filed, April 27, 1843.

Answers of Samuel Sewall, a witness produced and examined on the part of the defendants.

To the first interrogatory. I am thirty-two years old next November. I follow lumbering and exploring. My place of residence is Oldtown.

2. I was so employed in company with Levenseller and Farnsworth, in 1842. Samuel Smith, of Bangor, employed me the last of July, or the first of August, of that year. Elbridge Moore was employed to accompany me. I first met him in Bangor, about eight o'clock in the evening before I left.

3. Mr. Smith told us to go to Gore's tavern, at the foot of Moose Head Lake, and there we should wait till the commissioners came, if they were not there on our arrival. He said there was some dispute about the township between Mr. Doggett and Emerson and others, and he wanted we should go on there and lay in with them. He also told us to be sure and let no one know who employed us, but to go with them as though we were for ourselves, and tell them we wanted to look out a chance for logging. He also told us that the commissioners were very high estimators of timber, and he wanted we should put them down as low as we could in their estimate, and to go with them, and when they came to a tree which they thought was good, and we thought was rotten, we should cut it down and satisfy them how it was.

4. I joined the commissioners at Mr. Gore's. We arrived there a day and a half first. I asked Mr. Levenseller if he was going on to No. 3, in range 13. He said he was. We told him we were going on to the same town, and should like to go with them if they had no objections. Levenseller said he had no objections. Farnsworth said he had none, and would like very well to have us go. We then made common stock of our provisions, and started with them.

5. We did accompany them to the township, and continued with them about four weeks, till the exploration was finished. We acted as their men did in making the exploration. There were eight of us in all.

6. We took a strip from ten to twenty rods apart, each man from the other; our calculation was to be about twenty rods apart, unless it was very thick, and I should think we averaged twenty rods. We meant to take a strip of about eighty rods in width, and in this way to pass through the town. The man on the outside spotted a line so to set off another strip for exploring, and in this way we passed through the town. We did not pass through any part of the township more than once, unless by mistake. The men in crossing did not preserve parallel lines,

but used to wear in and wear off, sometimes coming together and sometimes wandering over a hundred rods apart. They were out of hearing very often; I recollect that young Farnsworth crossed my line and came in behind me and forward of me.

7. I should think, take the town together, it was rather heavily wooded. In some part of the town the underbrush is as thick as I ever saw it any where. In the hard-wood land it was pretty heavily wooded, but not much underbrush. It was pretty good travelling on the hard-wood land, but in the swamps and soft-wood land it was rather bad. I should think a man could be seen twenty rods in some places, in others he could not be seen two rods; and so of the body of a tree.

8. It is necessary. Timber cannot be accurately estimated without going to it. You must see every side of a pine tree to know what it is.

9. I do not think that more than one half of the trees were examined by us in that way—by going to them and looking all round them.

10. I should say the township is rather broken, particularly the north-east part of it. There are some bad hills and horse-backs.

11. Such inequalities do conceal timber from the observation of explorers. I have often known it to do so. I once saw and was in a berth of timber, and went to the camp on the same township where I saw the berth, but afterwards it took me two days to find it again. It laid in a valley between mountains, so that I could not get sight of it; I should think the timber was a good deal hidden by mountains in some parts of No. 3, range 13, from our party.

12. We did keep minutes of our estimates as we explored. Those minutes were received as evidence of timber by the commissioners on the parts assigned to Moore and myself for exploration, and were added in to make up the sum total. Each man kept his own book by day, and at night they were added together. No other estimates were made on the parts explored by Moore and myself other than what we made.

13. We calculated to be faithful to our employer, and obeyed his instructions. We endeavored to have a low estimate made of the timber. We were in the habit and did often converse with the commissioners and their assistants about it, for the purpose of producing a low estimate. We used to tell them, when they were examining sapling timber, that such timber was not worth cutting and driving, and would reckon up the expenses of getting them to market. They were induced from what we said and did to omit some trees which might have been sound. Sometimes, when travelling in the woods, we would hear them talking about it, and making up their minds what to call it, and would make such representations to them that they would alter their estimate of it. In one case they altered a tree from two thousand to five hundred, in consequence of our representing a *nutmeg* to be a *conchus;* a nutmeg is a sign of sound timber.

14. I should think the commissioners were not experienced and skilful judges of timber and timber lands; nor were young Spaulding and Farnsworth, their assistants, good judges of it. I cannot state the character of these men, they were strangers to me; it was rather, I think

an easy matter to deceive them in a pine tree. I don't now recollect any instances, other than those I have already stated. I think if a man does not know a *nutmeg* from a *conchus*, that is enough to show that he don't know what timber is.

15. I think the men were fitted well enough to go in the woods, but some of them needed a guide board to direct them; I could go better with the sun than they could by their compasses.

16. The commissioners, and those employed by them, climbed very little to see where the timber was; the climbing was generally done by myself and Moore.

17. I was on the township about four weeks. I should think the time lost by the weather, when we did not do any thing in exploring during any part of the day, was four or five days; there were parts of days also lost. I think the same work might have been done in eight or ten days less than we did it; the labor of exploring generally commenced between nine and ten, about nine on an average; it ceased about five o'clock in the afternoon.

18. There were sections not explored at all; it is so long I have almost forgotten. I had a book, in which every section is put down that was explored; it is not with me. No. 34 was not explored, nor were 35, 36, 30, 29, 18, 33, 32, explored at all. Number 17 was explored fully; we began near by that. So was No. 23; No. 25 was only partially explored. We passed through No. 7 once, and did not see much timber, and concluded there was not much; that is all we did on that. Nos. 8 and 9 were explored by Moore, Farnsworth, sen., and others; I did not go on to them at all. Rose, Farnsworth, Levenseller, and Meservey and Moore, went on to No. 6 one afternoon. I think number 12 was not explored at all; No. 31 was not fully explored; we went a little way on to it, and climbed.

19. No. 11 was fully and thoroughly explored; it was the first or second that was examined; we afterwards got to be careless.

20. The company was so divided into two exploring parties; Levenseller, Rose, young Farnsworth, and myself, were of one party; Farnsworth, sen., Moore, Meservey, and Spaulding, were of the other party; for a few of the last days we were there.

21. It is rather a hard question. If you mean to go to every tree, I should think it would take eight competent men three or four months to get it as exact as that, so as to know the exact quantity of merchantable pine timber; it would be a very particular job.

22. I have not a great deal of confidence in the report of these commissioners; I should like to take the township on their estimate, if I could get it. I think there is a good deal more of merchantable pine timber than they have reported, though there is a good deal of rotten timber there.

23. I have been engaged in the timber business and exploring fifteen years. I have explored several towns on the Sebois; all on the East branch that have been logged on; on the Mattawamkeg, as far up as lumbering has ever been carried on; also on the West branch, four or five townships.

24. I never was on any township where the timber stood so thick as it does on No. 3, range 13; I never saw a town where there was so much pine timber as there is on that.

25. We lived all together; Mr. Samuel Smith furnished us our provisions; we put them with the commissioners', and they were cooked together.

26. I don't now recollect any thing in particular to state.

Cross examination on the part of the complainant.

1st cross. I never passed a word with one of the defendants on the subject. Neither of them ever gave me any directions as to the manner of exploring the same, nor did any of them agree to pay me for my services, nor have they paid me any thing for them. I never had any suggestion for leaving my bill against Doggett with an attorney from any of them. I told my attorney that I should like to have him get it for me if he could; some one had ought to pay it. I think I did not tell my attorney so at the suggestion of either of the defendants. I had not been paid for said services before I made such charges against the complainant; neither of the defendants told me any thing about it; they never said any thing to me about it.

2d cross. I never was in the employment of either of the defendants, either before or since I went on to the township; nor received any money, or other compensation from them, or either of them. I have not been in A. M. Roberts's employment during the past lumbering season; I am not now in his employment, or in that of either of the other defendants, nor in their pay.

3d cross. Neither Roberts, or either of the other defendants, ever spoke a word to me about my testimony in this cause. I should think a person, skilful and practised in exploring townships, could not, at any great distance from a tree, by an observation of the size and height of it, determine its contents, so far as to be considered accurate for all practical purposes. Such explorations, or estimations, are relied upon too much; a great many get deceived by such estimations. I can't say what explorers usually do; I can only speak for myself. Explorers do rely upon such estimates a good deal, for themselves, as furnishing evidence for purposes of sale and lumbering, but they get cheated sometimes. I have never known a township explored, either for purposes of sale, or for the purpose of ascertaining the advantages of lumbering thereon, where each tree was visited and measured, for the purpose of determining the quantity of timber upon the township or tract.

4th cross. Explorers can determine whether a pine tree is defective or not by the growth of it; by its bark; if the bark is full of little curls, like a whirlpool upon the water, one would look out for a rotten tree then; but if the bark is smooth, it shows it is sound. Sounding with an axe, also, is a mode of determining the character of a tree. There are such excrescences as *conchos*, which show at once that the tree is defective internally. They do determine by the *conchos* whether a tree is good for any thing or not; but still there may be a *conchos* near

the top, and a good log in the butt, and a *conchos* in the butt end, and a log in the top. Case knots also indicate defects; these are hollow knots, which work into the heart of the tree; these show that the tree is defective. Also, a tree that grows larger, as you go up along, is sure to be rotten.

5th cross. In my explorations with the commissioners, I did not reckon any tree sound that had these defects on them. All that we reckoned were free from them; that is, all that I estimated. I did not cut down a tree while I was on the town, nor did the commissioners, to my knowledge; nor do I know that any one of the company cut one down, either of timber pine or pumpkin pine. Most of the growth there is *timber pine;* most of the rotten pine timber there is timber pine. Sapling pine timber is usually free from defect.

6th cross. I estimated it according to orders. Our calculation was to get it as low as we could, without regard to the facts. We used to talk with them, and make them believe there was less in quantity, and of a poorer quality, than there was in fact the case, as I have before stated. The commissioners altered their estimates twice; once in the case of the *nutmeg* tree, and in their estimate of sapling generally. They did not consider it worth estimating, though at first they calculated to estimate it. The sapling was not estimated in general, when it ought to have been; they did not estimate sapling, unless it was a pretty large tree. Judge Farnsworth and his son, I think, Mr. Rose, and myself and Moore, were present when we concluded not to estimate sapling, and it was accordingly left out.

7th. cross I undertook to try them, to see if they knew what timber was. Yes, I undertook to deceive them, and did it. I have already stated how I did it. I should think I deceived them in two or three instances; in regard to climbing, it was usually done by myself and Moore, and they took our reports. I made Farnsworth, and all of them, believe, that it was not right to estimate small sapling; they all finally concluded not to do it. We used to go up to a tree, and asked them how much they called it? they would answer so much; and then we would tell them that was high, and that we thought it would not make as much as they had estimated, but a less quantity. We would then ask them if that was a sound tree, and they would say it was; we would pronounce it hollow or rotten, and they would take our statements, most generally, as to quantity and quality. We knew we had succeeded in deceiving them, because they would put down about what we said, when we had any talk together about a tree. They thought that we knew what timber was, and all about it, and placed confidence in us. Judge Farnsworth could not stand fatigue in the woods so well as the rest of us. I know some of them could not go in the woods without a guide, because they would lose the check line often, get behind and forward, and the Judge himself would get lost. One day he got two or three miles out of his way, and we spent two hours following him and hallooing after him, till at last he heard us and turned about; he had a compass all the time with him. George Farnsworth fell be-

hind in coming into camp one evening, and when he came up he passed within five or six rods of the camp, at a brook where we got our water, and went on a mile beyond, and we had to go after him. He would not follow his compass. I never knew any thing of them before; I never had been with them exploring, or any where else.

8th cross. I mean Samuel Smith by my employer. He instructed us to reduce the estimation just as low as we possibly could, and to put it down every way. They were by conversation—verbal. None of the defendants had any knowledge of those instructions that I know of.

9th cross. The reason that those sections were not explored was, because the men employed by the State thought there was nothing on them, and, of course, we agreed with them. They said they thought there was nothing, and they thought it was not worth while to spend time to explore them. Numbers 17 and 23 were wholly explored. Numbers 7, 8, 9, 25, were not wholly explored, because Moore climbed and reported little timber; so they passed this and part of each of these sections, (so Moore told me in regard to 8 and 9.) I know about 7 and 25. No. 6 was so explored, because they made up their minds that there was nothing worth going after. I think No. 12 was not explored for the same reason. No. 17 was fully explored, because it was a very small section, two-thirds of it being water, and being near the camp. No. 29 was not explored, for the reason that the commissioners concluded there was not much timber on it. They probably called it something. No. 31 was not fully explored for the same reason. The exploration of No. 11 was so explored because we kept in sight of one another all the time, and marked all the trees on it, estimated the contents. It was the first or second explored. We had not been with them a great while. —

10th cross. The company was so divided so as to get through the sooner. It was calculated that each party could do as much as the whole. My estimate of the time it would take eight competent men to explore the township in that way, is founded on the time it would take to examine and measure a single tree, especially when it was rotten, and had to be cut down, or climb and try with an axe.

11th cross. I think I did state to the commissioners, that I concurred in their report of the pine timber on the township. I think there is more merchantable pine sound timber than the commissioners report, because they did not go to all of it. There is a good deal there that they did not see. Another thing, they left timber that was sound which they did not estimate. I should think there was double the merchantable pine timber there than they reported.

12th cross. I have never been on said township at all, since I was there with the commissioners.

(12?) 13th cross. I have never seen, or been told, the substance or purport of these interrogatories, till they were put to me by the commissioner to-day. I knew nothing of them, one way or another.

SAMUEL SEWALL.

Subscribed and sworn, June 19, 1843, before me—
FRED. HOBBS, *Commissioner.*

Answers of Elbridge Moore, a witness produced and examined on the part of the defendants.

1. I am thirty-three years of age. My occupation is lumbering. My place of residence is Oldtown.

2. I was so engaged with said commissioners in exploring said township in 1842. I was employed by Samuel Smith, of Bangor, in August, 1842. Samuel Sewall, of Oldtown, was employed by Smith to accompany me. I first met him in Bangor, in front of Smith's office.

3. Mr. Smith told me he wanted me to go up there, as there were some commissioners going on in behalf of the State, and that they were going on to estimate the pine timber on it. Smith told me that he wanted I should go to Moose Head lake, and there I should find the commissioners. He wished me to try to get in company with them, and if they asked me where I was going, to state to them I was going on to that township; and if they asked me for what I was going, to tell them that I was going to find a chance for a lumbering operation; and if they asked me whether I was going for myself, or any one else, to tell them I was going for myself, to prevent suspicion. I was also directed to go with them, but not to let them know that I was directed to get in with them. I was also directed to get Charles Gore, at the foot of the lake, to assist me in making the commissioners think I was going in there on my own account, and to tell the commissioners that I wanted to go in with them so as to see more conveniently what there was on it. Smith also told me, when I got in with them, to get them to make their estimate as low as possible; that when they went to a tree, if I saw any blemishes, such as *konkus*, or rotten knots, or hollow buts, to tell them that it was not fit for market at a stumpage of four dollars, or four and a half; that if I could not convince them it was such a tree as I should describe it, to chop it down, if they were there long enough, and shew it to them. He told me to be sure and keep with them, and to make correct estimates together.

4. I joined the commissioners at Gore's tavern, at the foot of the lake. Sewall and I arrived there first. We arrived there Sunday about noon, and they reached there on Tuesday night. I asked Mr. Farnsworth if he was going across the lake; he said he was. I asked him how far; he said to township No. 3, in range 13, on the west branch. I told him that I had come up there for the purpose of going on to said township, and that I should be pleased to go on with him, as myself and companion had been disappointed in a boat to cross. Farnsworth asked me how long I wanted to be gone. I told him I did not exactly know. He then said to me, he was short of one man, and he asked me if I would not hire out with him by the day, and go with him till I got through. I asked him how long he expected it would take him; he said from four to six weeks. I told him I thought I should not be able to stay quite so long as that, and that I had rather not hire with him.

He then asked Messrs. Rose and Levenseller if they had any objections to my going with them, and they said they had not, as I was going for myself to look for a chance for lumbering. Rose then said that he heard that Samuel Smith, of Bangor, was going to send up a couple of men to go on with them, and asked me if I was for Smith; and I told him I was not, that I was for myself, and had not heard any thing of Smith's men. After this conversation, I called Sewall up to us, and, introducing him, told him what the commissioners had said.

5. I did accompany said commissioners to the township, and continued with them till we got through exploring, and acted as assistants to them in making said explorations. There were eight in all, including the commissioners. The assistants were Meservey, Joseph Spaulding, George Farnsworth, Sewall, and myself.

6. The examination was made as follows. We commenced at one corner, and put one man on to the original or check line, and then we separated from each other from ten to fifteen or twenty rods apart, and the man who was in the centre of the *check*, or mile square, or on the outside, spotted a line through to return upon; and in this way, passing in various directions, we explored the greater part of the sections or checks. To explore the other or remainder of the township, we climbed trees and overlooked the country. After we had passed a section in that form, each man produced his account of it, and we put them all together, and made up an estimate of the first quality of pine timber we had seen. Sometimes we crossed a section once each way, and sometimes twice each way, that is, from two to four times. The different members of the party endeavored to keep equal distances from each other, in parallel lines, but sometimes got off their course, and came close together sometimes; and then again they would be off some distance from each other. They would very often get behind, some into the lines of each other. I have known them to get separated, and wander away from each other a hundred rods, and so far as to be out of hearing of each other.

7. It is pretty heavily timbered. The underbrush is not very thick. It was pretty good travelling for the most part. About half of it was very open, and the remainder was very thick. In some places you could not see a man two rods; in some you could see him ten or fifteen rods; and about the same as to the trunk of a tree.

8. If you would get a correct estimate it is necessary to go to each tree, and examine it separately.

9. A very small portion of the pine trees standing on the sections explored at that time, were so visited and examined by us.

10. The surface of the township is rather broken. The most part of it is hilly, and having high horse-backs.

11. I should think the hills and horse-backs would conceal the timber from view. I have often sought for timber, so concealed, and could not find it, when others have found it. I think, in all probability, that the explorers on this township overlooked timber in the valleys.

12. Sewall and I made our estimates, and kept minutes while ex-

ploring each section, and every night when we finished a section, we handed in our minutes to the commissioners, who received them as they did those of their own men, and added them in to make up the sum total of their estimates. No other persons than Sewall and myself explored the parts of the sections which he and I explored.

13. I calculated to be faithful to our employer, Mr. Smith, and to follow his instructions. I tried to have as low an estimate made of the timber as we could, and I was in the habit of conversing with the commissioners in the woods, and in the camp, with a view to the attainment of that object. We used to talk to them, and tell them it would not do to estimate such and such trees; then we would go to a tree and shew them a *choncus*, and say to them, "that tree is not good for any thing," and then they would go away and leave it. The commissioners and their assistants would both, very often, alter the minutes of their estimates, in consequence of what Sewall and I did and said, and excluded timber which ought to have gone into the account.

14. I should think that the commissioners were not experienced and skilful judges of timber and timber land. I thought that the judgment of their assistants, Spaulding and young Farnsworth, was not good in that respect. They all seemed to believe what others told them, and not to rely upon what they saw in a great measure. It was not a very difficult matter to deceive them. I would go to the foot of a tree with them. They, one of them, would strike the but and say it was sound, or nearly sound. I would then strike it, and tell them it was hollow; and then looking up and seeing a little knot or burl, I would point it out to them, and ask them if it was not a *choncus;* they asked me what I thought it was, and I would tell them I thought it was a *choncus;* they then asked me if it hurt it, if it *was* a *choncus;* I told them it spoiled it, and then they would leave it. And so we did throughout the exploration.

15. I should think Farnsworth was too old a man to make such an exploration, or to undergo the fatigues of it. The others were capable of enduring it. The Farnsworths and Spaulding would very often get lost in the woods, and we had to find them. The others were better woodsmen.

16. The commissioners did not climb to my knowledge; Rose climbed a few times. The climbing was mostly done by Meservey, Sewall, and myself, to see where the timber was.

17. I think we were on the township thirty-one days. I was gone from home forty-five days. I should think the party was prevented from exploring one-fifth part of the time by bad weather. We usually began to explore about seven o'clock in the morning, some mornings earlier than others. We usually got in from exploring about four o'clock in the afternoon, sometimes a little later.

18. There were some sections that were not explored at all. Sections numbered thirty-six, thirty, twenty-eight, eighteen, and I think some others, which I do not now recollect. Section numbered seven, I did not help [to] explore, I believe. Eight was partly explored, also

nine; seventeen and twenty-three were not thoroughly explored. Twenty-five I did not help explore; thirty-three was partly explored. When we were on sections like those above named, I used to climb and call Meservey, who also climbed; I told him there was so little timber on them that it was no use to explore, and accordingly we did not, but made an estimate on such checks or sections from observation when climbing. We travelled through number six kind of promiscuously, every one by himself, and counted a few trees. We did so because the old field notes put down no timber on them; and so of a number of other lots. On number twelve, we commenced at the northwest corner, Farnsworth, Meservey, and myself. We run along in sight of each other first south a mile, and then east a mile. The other party started from the same place, and run east a mile, and then south a mile, and met us. They run south, till they came up to us, in the southeast corner. We did not examine it much, I found it was small sapling timber, and told Farnsworth it was not such timber as he should estimate, and they did not pay much regard to it. They put down a very few trees in their account of it. We explored section, numbered seventeen, by crossing it from other checks, but not to get any correct estimate of it. We estimated what we saw at different times. I don't recollect the number of thousands, but it was rather a small quantity. I think number twenty-nine was only partly explored. I believe we only went through it once, and estimated what we went to as we passed through it. I believe we went across number thirty-one once, a part of us, and examined trees as we went along, a few only. It was very thick heavy travelling, and I climbed and reported the timber was scattering, a black growth, thick ugly travelling, and then we made a circle round, and struck back to our camp. I reported an estimate at the camp of the quantity of timber on these lots.

19. We explored number eleven as follows: Seven of the party began at the southwest corner, started running north in a narrow strip about forty rods wide, at equal distances, and went to the north line of the section, and examined the timber as we went along, and talked about the quantity as we went along. We then struck off east a piece wide enough to make one breadth south, and then turned and went south to south line of the section; and so backwards and forwards, until we had finished the section. We spent about double the time in exploring the section number eleven that we did any of the others.

20. The company, for a few days before we left the township, was divided into two exploring parties—Farnsworth, Meservey and Spaulding were in one, and Levenseller, Rose, Farnsworth and Sewell were in the other party.

21. I should think it would take four months to explore said township by eight men competent to explore, to ascertain fairly the merchantable pine timber upon it. I think, to do that, they should count every tree, and estimate its quantity and quality. It is not usually done so, however, for people are apt to be in a hurry in making such explorations.

22. I believe the estimate of the commissioners, in their report, is not to be relied upon as accurate. I think, from what I saw in it, there is a great deal more merchantable pine timber there than what they reported.

23. I have been engaged in the lumbering business ever since the fall of 1831, and in exploring, for two or three summers, a considerable part of the time. I have travelled over the timber land on the east and west branch, and some on the Mattawankeg and Sabois. I never explored any township in full like that of last summer, but have travelled over those on the waters above mentioned.

24. I should think the pine timber on number 3, range 13, was pretty thick, compared with other townships. There is more than on many other townships that I have been on to. I have never seen more timber on any township than I have seen there on No. 3, range 13.

25. Sewall (my companion) and myself lived with the commissioners while on the township. We had our own provisions as furnished by Smith, so far as they went. We put our provisions into common stock, and all lived together.

26. It may be material for me to state that when Smith employed us to go, he said he was authorized by a man in Boston to employ two men to go on to the township with the commissioners; that there was some contention between a man by the name of John Doggett and William Emerson and others; that he wanted we should go on and do as I have stated, and then come back and make a report, and sign it. We did so. Smith said, on sending up the report and an account of the expenses, he should get the money, or a piece of paper that would raise the money, and he then would pay us. But he has not paid me; I can't speak for Sewall.

Cross examined on the part of the complainant.

1st cross. I never had any conversation with the defendants, or either of them, before I went on to the township, in reference to exploring said township. They never gave me any directions in the matter. Nor did any one ever agree with me to pay me my wages, or compensation, for services in exploring the same; nor have said defendants, or either of them, ever paid me anything, or agreed to do so. I have never left my bill against Doggett with any attorney for collection, nor received any suggestions, or given any directions to any one about collecting it. I have never been paid for my services by any one. I have had no conversation with either of the defendants about my bill in any way. I only know them by sight.

2d cross. I have never been in the employment of either of the defendants, either before or since making said exploration, nor in the employment of any persons connected with either of the defendants, to my knowledge; nor am I receiving any compensation for any services in any business of theirs.

3d cross. Neither Amos M. Roberts or any other of the defendants has had any conversation with me, or any interview, on the subject of

the testimony I am to give in this cause. I am not sufficiently skilful, or practised in the exploring of townships, to determine the contents of a tree by an observation of the size and height of it, at any distance from it, with any accuracy. I do not think any one else is so skilled for purposes of buying or selling. A man must be at the foot of a tree, and pass round it, to form any correct opinion of its contents. Such estimates are usually relied upon, however, by lumbermen, and persons desirous of purchasing townships. I think a great many townships have been sold on estimates founded on such an examination: more formerly than at present. That is the way in which lumbermen explore for a chance to log in. They go amongst the timber and climb and look about. Those who explore for the purpose of estimating quantity and quality of the timber, with a view to buy or sell, make a more thorough exploration; and more so now than formerly. I have never known a township explored, either for purposes of sale or for ascertaining the advantages of lumbering thereon, where each tree was visited and measured for the purpose of determining the quantity of timber upon the township or tract.

4th cross. Explorers determine whether a pine tree is defective by sounding it with an axe. There are excrescences upon the bark, or outside, of defective pine trees, usually called *conchus* by explorers and lumbermen, which indicate that the tree is internally defective. Lumbermen determine whether a tree is wholly or partially unsound by the number and situation of the *conchuses*. On cutting it down, it sometimes does not prove to be so bad as it appeared, and sometimes it is worse. Trees may be hollow-butted, shaky, spur-rotted, and sometimes case-knotted—that is, having knot, with the middle of it rotted out. These things show the tree to be defective.

5th cross. When, on sounding and examining a tree, I found some of these defects, I called it a sound tree, when I was with the commissioners; if the defect was not apparent, I called it sound. I have no knowledge that the commissioners, or any one of the party, cut down a single tree. They did not while I was with them. The timber on that township is mostly *timber pine*. I saw no timber there that I call *pumpkin pine*. The rotten pine there is mostly among the *timber pine*. The sapling pine is not altogether free from defects, and on that township it had the appearance of being a little more rotten than sapling pine in general.

6th cross. My instructions were to get the estimate made as low as possible. I was to pay no regard to the truth of the estimates, but to get it down as low as I could. I endeavored to accomplish it by asking the commissioners if such and such knots were not rotten, and if the tree was good for anything if it was wrotten. When they saw a small-sized tree which they wished to estimate, I told them it was too small to estimate, that such a tree would not pay for getting to market. I did this a number of times, and it was the general course pursued by me and Sewall. I cannot recollect how many times the commissioners or their assistants altered their estimates in consequence of what we said

or did. I have known them to do it three or four times at best. I cannot tell how much or what kind of timber they left out of their estimates that should have been included. Spaulding very often left out timber that should have been included, and so did George Farnsworth. I have known the old man (Farnsworth) to alter his estimate.

7th cross. I did deliberately undertake to deceive the commissioners and their assistants: that was our object, we were so instructed. When we came to a tree that had nothing on it but a sound burl or bunch, we would ask them if it was not a *conchus*, and, if so, it ought not to be estimated; and would say, as like as not it is a *conchus*, and they would leave it out of their estimate. We would tell them, when we climbed to see timber, that there was not enough to go to look at, and thew would pass it by. We succeeded in deceiving George Farnsworth, Spaulding, and old Mr. Farnsworth, some few times in this way. We did not pay much attention to the rest of them. We thought they were men who were more used to the woods, and could not be so easily governed. We experimented on Spaulding and the two Farnsworths. We would ask them what they had estimated a tree to which they had been; they would name the quantity, and then we would tell them they had estimated it too much; that it was hollow-butted, or short-bodied, or otherwise defective. They would then put down whatever we said was right. We were thus satisfied that they could not tell how much a tree would make; they were more likely to make it too much than too little. I had no other means of knowing whether the commissioners or their assistants were fitted, by their previous habits, to endure the fatigues of such an exploration, or to find their way in the woods without a guide, than from what I saw in the woods. Some of them got lost, and some of them got fatigued, and would often lag behind, and we had to stop for *him* to come up. I had no knowledge of their previous habits. I did not know them. I had never been with either of them before in exploring.

8th cross. I mean by my employer Samuel Smith; he said he was authorized by Doggett to hire two men. I obeyed his instructions as nigh as I could; his instructions were to go on to this township by way of Moose Head lake, and there meet the commissioners, and make them believe we were going on to this township to look out a logging berth, to get into their company, and to keep with them while they were estimating; to stay as long as they stayed, and be sure and not come home till they did; if we could render them any assistance to help them, and make it seem as if we wanted to get as good a chance as we could, and at the same time to get the estimate as low as possible. Samuel Smith gave us these instructions; they were for the most part verbal. He afterwards wrote us a few lines; I have lost his letter, and cannot annex a copy of it; it was a repetition of what he had said, in part, and told us to remain as long as the commissioners did, and to keep things secret. None of the defendants knew of these instructions to my knowledge; I got them in the evening, and left in the morning; I did not know the defendants.

9th cross. Those sections referred to in my eighteenth answer were not explored, because the old field notes reported that there was no timber on them; and also stated to what part of the town they went to ascertain if there was any timber on them or not. The commissioners said they had not time to explore them, and that their provisions would not hold out; Rose said he must be at home at such a time, and as Rose and Meservey and I had climbed, and the field notes stated there was no timber on it, they concluded not to explore those sections. Sections 7, 8, 9, 17, 23, and 25, were not wholly explored, because the timber was scattered, as we saw by climbing; but when we saw a thick growth upon any part of them we would go into it. We all thought it was not worth while to go anywhere only into those thick places. Number eleven was the first section that we went on to, that had any considerable timber upon it; and we thought we would make a pretty thorough examination of it, to see how it compared with the field-notes; we found no other section having so much timber on it as No. 11; we travelled closer, and examined more carefully, and concluded that if we had got to examine the whole township as carefully, it would take longer than we should be able to stop.

10th cross. The commissioners thought if the party divided it would save removing all our provisions; as if part of the company took half the provisions, the other part would stay where they were, and use the provisions there; and besides, our boat would be nearer the place from which we were to start to go home. We were apart two days while we were exploring, and about three days in all. I form my opinion of the time it would take to explore the township in the manner inquired about, from the time it took us to explore No. 11; it would take us four months to do it, working as we did there, going out late, coming in early at night, and lying still rainy weather.

11th cross. I told the commissioners that my figures agreed with theirs, but I don't know that I told them that my opinion was according to their estimates in figures. I am of the opinion expressed in my twenty-second direct interrogatory, because I saw timber by climbing which they did not examine, and because they under-estimated that which they did see; I cannot state how much more merchantable pine timber upon said township there was than the commissioners reported; I have not sufficiently explored it to form an opinion; it would be nothing but guess-work for me to express an opinion of the quantity of merchantable pine timber on said township; I should say ten or twelve millions.

12th cross. I have not been upon said township during the past autumn and winter, nor at any time during the spring; nor have I ever been there since I went on with the commissioners.

13th cross. I have never seen any of the interrogatories in this case, nor any copy of them, nor been told their substance or purport by any one; I did not know what I should have to testify from any suggestions of either party.

ELBRIDGE G. MOORE.

Subscribed and sworn, May 3, 1843, before me,
FRED. HOBBS, *Commissioner.*

UNITED STATES OF AMERICA.

Maine district, ss: First circuit.

The circuit court of the United States, begun and holden at Wiscasset, within and for the Maine district, on the first day of [L. S.] October, in the year of our Lord one thousand eight hundred and forty-two.

To Frederick Hobbs and Henry Warren, of Bangor, esquires, or to either of them respectively.

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these present do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of Leonard Jones, Aaron Babb, Moses Babb, Caleb Leavitt, and Hezekiah Winslow, witnesses to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, and William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland on the first day of May next.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this twentieth day of April, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

UNITED STATES, *district of Maine, ss:*

By virtue of the within commission to me directed, I have caused the said Leonard Jones, Aaron Babb, Caleb Leavitt, and Hezekiah Winslow, to be brought before me, and each witness, while before me, and apart from all others, was carefully examined, on oath, touching the premises, and having taken his examination, his testimony, in answer to said interrogatories, was reduced to writing by me, and each witness subscribed the same in my presence.

The execution of this commission, therefore, appears in the depositions of Leonard Jones, Aaron Babb, Caleb Leavitt, and Hezekiah

Winslow, to whose deposition are attached the papers marked A, B, and C, making a part thereof, identified by my signatures.

FRED. HOBBS, *Commissioner.*

Defendants' interrogatories to Leonard Jones, a witness produced and examined on the part of the defendants.

1 interrogatory. State your age, occupation, and place of residence; and if you are related to, or connected with, any of the defendants, state that relationship and connection.

2. Are you a part owner of township No. 3, 13th range of townships west from the east line of the State of Maine; have you granted a permit or license to cut timber on it during the present logging season, the season of 1842–'3? If yea, state when that permit was given, the parties thereto, and its terms.

3. State how many teams have been employed under that permit; how much timber has been cut and hauled; the quality of the timber, and its value when in the Penobscot boom, at the market prices of logs, in 1842 and 1843.

4. Have you ever been on said township? If yea, give as accurate an account as you can of the timber on it, its quantity, quality, density, situation, &c.

5. Have you been in the habit of exploring timber tracts; if yea, for how long a time; to what extent; for what purpose?

6. How long a time, in your opinion, would it take eight men to make a thorough examination of this township, "exploring each lot by itself, travelling across the same at such distance from each other as to see all the timber, noticing the contents of each tree as they passed it," so as to be able to make a fair estimate of the whole amount of merchantable pine timber on it? Give your views in this matter fully.

7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed, April 8, 1843, and a copy served upon complainant's counsel same day.

Plaintiff's cross interrogatories to Leonard Jones, a witness produced and examined on the part of the defendants.

First cross interrogatory. Are you an avowed Atheist; have you not, frequently and generally, in expressing your opinion upon these subjects, declared your disbelief in the existence of God, and in a future state of rewards and punishments?

Second cross interrogatory. As requested by defendants, in their first interrogatory, state your relationship to either of the defendants, and particularly to Amos M. Roberts. State your business relations with

him. State whether you hold any property, of any description, by transfer, grant, or assignment, from him, without any consideration paid therefor; and, more particularly, what bank stock you hold. State who are the active and silent partners in the firm of Leonard Jones and Company. State what interest Amos M. Roberts has therein. State whether Davis Roberts is a brother of Amos M. Roberts, and if in fact said Amos does not furnish all the money contributed by said Davis to the operations of said firm of Leonard Jones and Company. State whether said Amos has not frequently made purchases, in Boston and elsewhere, for said firm, and in their name. State what your legal interest is in township No. 3, range 13th of townships west from the east line of the State of Maine. State who conveyed that interest to you, and whether you paid any consideration therefor, and if so, what was the amount thereof, and when paid; and whether you do not in fact hold said interest in trust for said Amos M. Roberts, or some other or others of the above named defendants, and if so, for whom you hold it. State for what purpose you were invested with the title you have in said township, so far as the same were stated to you by either of the aforesaid defendants.

Third cross interrogatory. State what connection the firm of Leonard Jones and Company have had with the lumbering operations upon that township during the past lumbering season. State whether any supplies for said operations have been furnished by the firm of Leonard Jones and Company to Amos M. Roberts, or either of the other aforesaid defendants, or to the order of either or any of them. State whether any monies have been paid by said Amos M. Roberts to your firm, or by either of the other defendants aforesaid, for such supplies furnished by said firm of Leonard Jones and Company, and if so, to what amount. State what contracts have been made by the firm of Leonard Jones and Company with any of the men engaged in said lumbering operations, and in the exploration of said township, and if so, what wages were to be paid them for their services; and if any of said contracts were in writing, then annex the same, or true copies thereof, to your deposition. State also what moneys have been paid by the firm of Leonard Jones and Company to any of the men employed in the lumbering operations and explorations of said township, during the past lumbering season; to whom they were so paid, and to whom said moneys are charged, on the books of the firm of said Leonard Jones and Company.

Fourth cross interrogatory. State what *personal* interest you have had, or now have, in the lumbering operations or explorations aforesaid; or what *agency* you have had therein, on account of Amos M. Roberts, or any other of the aforesaid defendants. State whether you have been upon said township, and if so, whether in behalf, upon the request, and at the expense of said Amos M. Roberts, or either of the other defendants aforesaid; and if so, was it for the purpose of directing said lumbering operations and explorations in behalf of said Amos M. Roberts, or of the other defendants. State what contracts in behalf of said Roberts, and either of the other defendants, or all of

them, you made with any of the men engaged in said lumbering operations and explorations; and if any of them are in writing, then annex the same to your deposition. State whether you have communicated any orders or directions from Amos M. Roberts, and either or all of the other defendants, to the men engaged in said lumbering operations and explorations; and if so, how often, and what was the nature and purport thereof. State what directions were given to the men so engaged in lumbering and exploring, as to cutting the timber, and as to the manner of their exploration, and by whom, and in whose behalf, they were given. State whether you have personally paid any money to the men so engaged in lumbering and exploring; and if so, when, what was the amount thereof, and what portions thereof were paid in behalf of Amos M. Roberts, or in behalf of said Roberts, and any, and which, of the aforesaid defendants. State what portions of any moneys paid by you are charged to Amos M. Roberts, or to him and to any other, and which, of the aforesaid defendants. State what agreements you made with the men so engaged in lumbering and exploring, touching their compensation for services, and particularly as to the manner of the payment thereof; and whether said agreements were made in behalf of said Amos M. Roberts, or in behalf of him and any other of the aforesaid defendants; and if in writing, annex the same to your deposition. State what payments have been made by Amos M. Roberts, or by any of the other defendants, in pursuance of any agreement made by you, as his or their agent, with any of the men, for their services as aforesaid.

Fifth cross interrogatory. State what knowledge you have of any contracts made by said Roberts, jointly with any, and which, of the other defendants, as to the lumbering operations and explorations upon said township, during the past lumbering season, with any, and which of the men so engaged therein; and whether any, and, if any, which of said contracts were in writing. State the contents thereof, touching the wages of the men for lumbering, and the wages for exploration, distinguishing between each as to the amount thereof. State how and when the men were to be paid their wages. State whether said Roberts, or any of the other defendants, furnished any supplies for said operations and explorations. State what directions have been given by said Roberts to said men, relative to said operations and explorations, and what amount of moneys said Roberts has paid said men on account of said services, and all the knowledge you have of the control of said Roberts, or any of the other defendants, over said operations and explorations.

Sixth cross interrogatory. State what sections of said township you explored, how long you were upon each section, upon whose behalf you went, and in whose company, and what you were paid therefor, and by whom. State to whom you reported the results of your explorations, and what you have heard said by said Roberts and the other defendants, as to the objects of said explorations, so far as the same

were connected with testimony to be given in this suit. State your estimates of the quantity of merchantable pine timber upon each section. State whether, from the operations upon said township, you have observed many trees cut which were rotten inside, without any external indications upon them that they were rotten. State whether most of the large trees cut upon said township were not rotten, and whether the sound timber cut upon said township is not what is called sapling timber. State what sapling timber is, and what pumpkin pine timber is, and what timber pine is, and how these kinds of timber differ.

Seventh cross interrogatory. State whether John Towle has, to your knowledge, been in the employment of either of the defendants since the commencement of this suit; and, if so, of whom, how long, and what compensation he has received for his services.

Eighth cross interrogatory. State whether the interrogatories proposed to you by the defendants or plaintiffs in this case, or copies thereof, have ever been exhibited to you at any time before giving your depositions in this case; and, if so, by whom they were exhibited.

GEORGE W. COOLEY,
Solicitor for plaintiff.

Received and filed April 19, 1843.

Defendants' interrogatories to Hezekiah Winslow, a witness produced and examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2d. Were you interested in the lumber operations on township No. 3, 13 range of townships west from the east line of the State of Maine, the past winter, the winter of 1842–'3? If yea, state the nature of that interest, the parties to, and terms of, the contract by which it was created.

3d. State how many teams have been employed there under that contract; how much timber has been cut and hauled; its quality and its value when driven into the Penobscot boom, at the market prices of 1842 and 1843.

4th. Have you been on said township? If yea, give as accurate an account as you can of the timber on it; its quantity, quality, density, situation, &c.

5th. How long a time, in your opinion, would it take eight men to make a thorough examination of this township, exploring each lot by itself, travelling across the same at such distance from each other as to see all the timber, noticing the contents of each tree as they passed it, so as to be able to make an accurate estimate of the whole amount of merchantable pine timber on it? Give your views on this subject fully.

6th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your

examination in the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed April 8, 1843, and copy served with notice on the same day.

Plaintiff's cross interrogatories to Hezekiah Winslow.

1st. If you state that you were interested in the lumber operations of township No. 3, 13th range of townships west from the east line of the State of Maine, the past logging season, then state who was interested and associated with you in said operations. State how many men were employed by you in said operations. State what connection the firm of Winslow & Jones, or Winslow & Ordway, had with said operations. State who furnished the supplies therefor. If any contracts were made in writing between you and the men engaged in said operations, or between you and those associated with you, and the men so engaged in said operations, then annex the same to your depositions. State what contracts you made with the men in reference to exploring said township, and in whose behalf, and at whose suggestion, you made said contracts, and what wages were to be paid the men for exploring, and how and by whom. If you made any contract with the men in reference to exploring said township, why did you do it? If said contracts in reference to exploring were in writing, then annex the same to your deposition.

2d. Please state whether Amos M. Roberts alone, or jointly with any of the other defendants, applied to you to become interested in said operations; and whether it was not of his or their suggestion that you were induced to undertake the same. State whether you, and those associated with you, were not, in fact, carrying on said operations, and making said explorations as the agents, and on the account, and for the benefit, and at the risk, of said Amos M. Roberts, or said Roberts and others, and which of the defendants; and whether said Roberts, either alone or jointly with some of the other defendants, have not agreed to indemnify you from all loss arising therefrom, and to pay you a suitable compensation; and, if so, what, on account of your connection with said operators. State fully all agreements made between you and your associates in said operations and explorations with Amos M. Roberts alone, or with him jointly with any of the defendants, touching, or in any way connected with, said operations and explorations. On these points be explicit and minute as to all facts and circumstances relating to said agreement, if they were verbal; and, if the same were reduced to writing, then annex the same to your deposition.

3d. Please state what moneys have been paid you from time to time by said Roberts, or by said Roberts and any, and which, of the other defendants, on account of said operation and explorations. State by whom the supplies were furnished for said operations; whether by the

firm of Winslow and Jones, of which you were a member, or by the firm of Winslow and Ordway, of which you are now a member; if so, to whom said supplies are charged upon the book of either of said firms; and if the same stand charged to the said Roberts, or to him or any of the other defendants, then annex copies from your books of said accounts; or if the same are not so charged, then state how otherwise they are charged.

4th. State whether or no Leonard Jones, in behalf of said Roberts and other, and which of said defendants, ever made any contracts with you in reference to said explorations and operations; and if so, state fully and particularly what they were; if verbal and reduced to writing, annex the same to your deposition. State fully and particularly what instructions you *received from said Roberts*, or from him and either, and which, of the other defendants, in reference to the manner of cutting the timber upon said township, and in reference to the manner of exploring; and whether such instructions and directions were communicated by you, or by those associated with you, to the men so engaged in the said lumbering and exploring. State whether you received any such directions in reference to cutting timber and explorations from Leonard Jones, in behalf of said Roberts and either of the other defendants; and if so, which, what they were, and whether such directions were by you, or by those associated with you in said operations, communicated to the men. State what directions and instructions have been given by *you*, or by those *associated with you*, to the men so engaged in lumbering and exploring, in reference to said operations and explorations, and at whose request or suggestion were the same so given.

5th. State when, if ever, you were upon said township; and if during the past logging season, at whose request, and at whose expense; how long were you upon said township at any one time; did you pretend to explore the same; if so, how long were you upon each section; what was the quality and quantity of timber upon each section; in whose company did you go. State what compensation you received for your services as an explorer of said township. State the names of all the men engaged in said lumbering operations, during the past season, on said township, in said explorations.

6th. State whether or not the interrogatories proposed by the plaintiffs or defendants to you, or any copies thereof, were exhibited or seen by you, before you were sworn to testify; and if so, by whom, and when were they so exhibited to or seen by you.

GEORGE W. COOLEY,
Solicitor for complainant.

Received and filed, April 19, 1843.

Defendants' interrogatories to Aaron Babb, Moses Babb, and Caleb Leavitt, witnesses produced and examined on the part of the defendants.

1st interrogatory. State your age, occupation, and place of residence.

2d. Were you employed, during the last logging season, the season of 1842–'3, on township No. 3, 13th range of townships west from the

east line of the State of Maine; if yea, in what capacity, by whom, and for how long a time?

3d. What quantity of timber was cut and hauled there during that season; what was its quality? State fully and particularly, specifying the exact quantity cut on each lot or section.

4th. Have you made any explorations on said township? If yea, state when, at whose request, on what sections, and the manner and results of such explorations, fully; the time occupied, the quantity and quality of the timber seen; whether or no such explorations were thorough, &c.

5th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, in the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed, April 8, 1843, and copy served, with notice, on the same day.

Plaintiff's cross interrogatories to Aaron Babb, Moses Babb, and Caleb Leavitt, witnesses produced by the defendants.

1. If you state, in answer to plaintiff's second interrogatory, that you were employed during the last logging season, the season of 1842–'3, on township No. 3, 13th range of townships west from the east line of the State, please state by whom you were employed, and particularly what contracts were made with you by Amos M. Roberts and the other defendants, and which of them, in reference to the lumbering operations upon said township, and the exploration thereof. State whether such contracts were in writing; and if so, who has them; if either of you have, annex them hereto. State what wages you were paid for lumbering, and what for exploring, and by whom the same were paid to you. State what directions you received as to cutting timber upon and exploring said township, and from whom. State what conversations you had with Amos M. Roberts, and any of the other defendants, and if so, with whom, before you went upon said township. State what moneys have been paid you, by said Roberts and the other defendants, for your services in lumbering upon said township, and for the exploration thereof made by you. State what conversations you have had with said Roberts and others, since you returned from said township, as to giving your testimony in this suit. State what you were paid for giving your testimony, and by whom.

2. Please state what directions you received from Leonard Jones as to lumbering and exploring upon said township, and for whom he said he acted in giving those directions. State what moneys he has paid you for your services in lumbering and exploring upon said township, and in whose behalf. State what receipts you gave for moneys paid to

you, and to whom they run. State where, and from whom, you received your supplies. State who sent them to you, and with whom you settled for them.

3. Please state what proportion of the trees cut by you were sound. State whether many trees cut by you were unsound or rotten; and if so, whether you did not cut down many trees which were rotten, but which exhibited no external indications of "*choncos*," as it is called, or defect. State what "choncos" is, and whether it does not generally appear, and in fact almost always, on the outside of defective trees. State what "*timber pine*" is, what "*pumpkin pine*" is, and what "*sapling pine*" is. State what portion of the pine cut by you is "timber pine," what portion "pumpkin pine," and what portion "sapling pine." State what sections of said township you cut timber from; how much on each section. State who scaled the timber in the woods. State what sections you explored, and whether Leonard Jones was in company with you; and if so, how long, and on what sections.

State what your connexion was with Winslow and Jones, or Winslow and Ordway, in said operations and explorations, or with Hezekiah Winslow, fully and particularly. State whether Hezekiah Winslow accompanied you in exploring said township; and, if so, on what sections, and how long was he on each section. State what interest said Winslow took in said operations and explorations, and in whose behalf.

5. Please state how many teams were employed upon said township last winter, and who hired them. State how many men were employed upon said township the last lumbering season, and who employed them, and what were their names. State what wages they received, and who paid them.

6. Please state whether the plaintiff's or defendants' interrogatories to you, or copies thereof, were exhibited to you, before you begun to testify in this cause; and, if so, by whom.

GEORGE W. COOLEY,
Solicitor for plaintiff.

Received and filed, April 19, 1843.

Answer of Leonard Jones, a witness produced and examined on the part of the defendants.

1. I am thirty years of age; I am engaged in trade, and reside in Bangor. I am a nephew of Amos M. Roberts. I am in no way related to, or connected with, either of the other defendants.

2. I am part owner of said township No. 3, range 13. I did grant a permit to cut timber on it during the lumbering season of 1842–'3; it was dated December 18, 1842; it was given to Winslow and Ordway, of Bangor; they were to put on four or more ox teams. I was to have one-half of the logs in the boom at Oldtown—Veazie's boom. The usual provisions for the mode of cutting were contained in it. Also, it was provided, that whenever they cut down a tree, they should take from it all the tree that would make No. 4 boards.

3. Four teams have been employed under that permit. There was

cut, under said permit, according to the scaler's account, two millions four hundred twenty-seven thousand eight hundred and eight feet. I have not seen the timber, and cannot speak of its quality or value in the boom, at the prices of 1842 and 1843.

4. I have been on said township. I visited it in the spring of 1842, to see if there had been any trespassing there. I was only upon the exterior lines of the township. As I passed along, I saw some very good timber and some poor timber. It was very thick in some places; but I was not on enough to form any opinion of the quantity or quality.

5. I have been somewhat in the habit of exploring timber tracts, for the last three or four years more particularly. I have not explored very largely. I have been on quite a number of townships, but have not explored them very thoroughly. I have sometimes explored them for looking out chances for logging, and, in one instance, where I was interested in a township, and after the purchase was made, I explored to see what was on it.

6. I am of the opinion that it would take eight men at least eight months to make an exploration in the manner inquired about; but this is mere opinion. In the first place, it is very difficult to tell what tree would make merchantable pine timber. The best judges are often deceived. It would require a close scrutiny to ascertain it in many cases. In the next place, there is a great deal of travelling to be done in going to each tree and finding out the quantity and quality of it. I find, by computation, that it would require every man to travel over and explore a little over thirteen acres per day, reckoning eight men eight months, allowing twenty-six working days to the month, and not deducting stormy weather when they could not explore.

7. I don't know that I can state any thing further material of my own knowledge.

Cross examined on the part of complainant.

To the cross interrogatories I answer as follows:

1st cross. I am not an avowed Atheist, if I understand what that term means. I have not frequently or generally, in expressing my opinion on religious subjects, declared my disbelief in the existence of God. I *never* did. I undoubtedly have expressed my disbelief in a future state of rewards and punishments.

2d cross. I am related to Roberts, as I stated before, and to no other of the defendants. Amos M. Roberts is my partner in business, and has been some five years and more. I object to answering so much of this question as seeks to know "whether I hold any property, of any description, by transfer, grant, or assignment from him, without any consideration paid therefor; and more particularly what bank stock I so hold," upon the ground, that in no case will I disclose my private business to any body unless compelled so to do, where the question, in my opinion, has nothing to do with the case. Leonard Jones, Amos M. Roberts, and Davis B. Roberts, composed the firm of Leonard Jones and Company. There are no silent partners in said firm; those men-

tioned are all active partners. Amos M. Roberts is interested one-third. Davis B. Roberts is a nephew of Amos M. Roberts. I don't know Davis Roberts. I decline answering whether Amos, in fact, furnishes all the money contributed by said Davis to the operations of said firm of Leonard Jones and Company, for the same reason that I declined answering the former part of this question. Amos M. Roberts has very frequently made purchases for said firm in Boston and elsewhere, and in their name; it was part of his business so to do. I own one-sixteenth of township No. 3, range 13, inquired about. Amos M. Roberts conveyed that interest to me. I did pay a consideration therefor. The deed was made originally from one Hanson to Amos M. Roberts, by mistake of the attorney. Roberts and myself were then in company, and bought one-eighth, and paid for it by the money and notes of the firm of Leonard Jones and Company, composed of Roberts and myself, at the time of said purchase. Roberts, a few days afterwards, made a deed of one-half of said eighth to me. We *we* paid for the eighth the sum of three thousand nine hundred and ninety-five dollars, about the twenty-ninth day of January, A. D. 1842. I do not hold said interest in trust for said Amos M. Roberts. I hold it for myself, and not in trust for either of the other defendants, or any other person. I purchased it for myself, and for no one else.

3d cross. Leonard Jones and Company have had no connexion whatever with the lumbering operations upon that township during the past lumbering season; nor have any supplies been furnished by Leonard Jones and Company to Amos M. Roberts, or either of the other defendants, or to the order of either or any of them; nor have said Roberts, or either of the other defendants, furnished any moneys to said firm of Leonard Jones and Company for such supplies. No contracts have been made by said firm with any of the men engaged in said lumbering operations, nor in the exploring said township, neither before, or during, or since said lumbering operations, nor at any time. No charges are made on said books. There are none to be made for the same.

4th cross. I have not now, nor have I had any other interest in said lumbering operations, than my proportion of the stumpage. On the 21st October, 1842, I received from A. M. Roberts, Isaac Farrar, S. P. Strickland, and Samuel Farrar, a communication, of which the following is a copy:

"To Leonard Jones, esq. We, the undersigned, owners of the following proportions of the township number three, in the 13th range of townships west of the east line of the State, viz., said Samuel Farrar and Samuel P. Strickland, fifteen fortieth parts, the said Isaac Farrar, eleven fortieth parts, and said Amos M. Roberts, five-eightieth parts, in common with you and John Doggett, hereby request you to grant permits to cut timber upon said township the ensuing winter season, to such persons as you think safe and faithful, and upon such terms and conditions as you may judge most for the interest of all concerned; accounting to the several owners of said township for their

several proportions of the timber, rent, or stumpage of timber cut under the permits which you may grant.

Signed " A. M. ROBERTS,
" ISAAC FARRAR,
" S. P. STRICKLAND,
" SAMUEL FARRAR.

" BANGOR, *October* 21, 1842."

By virtue of this authority, I granted the permit to Winslow and Ordway, as I have already stated. I have had no other agency in it whatever for A. M. Roberts or either of the other defendants. I have been upon said township; I did go at the request of Roberts and the other defendants, for the purpose of looking after trespassers, and for nothing else. I made no contracts with the men engaged in lumbering or exploring, either verbal or written, except the said permit to Winslow and Ordway; nor have I communicated any orders or directions of said Roberts or other defendants to the men engaged in said lumbering or exploring at any time. Nor were any directions whatever given by me to the men so employed, I do not know what directions other persons may have given; I directed the scaler, as is usual, to see that they cut according to the permit, of which I furnished him with a copy; I have not personally paid any money to the men engaged in lumbering and exploring, in behalf of myself or Roberts, or other defendants. Nor are any moneys charged as so paid to Roberts, or either of the other defendants. I made no agreements with any of the men touching their compensation for exploring or lumbering, nor as to the manner of paying them, in my own behalf, nor in behalf of said Roberts, or other defendants. No moneys to my knowledge have been paid by Roberts, or either of the other defendants, in pursuance of any agreement with the men or otherwise, for their services in the matter.

5th cross. I have no knowledge that any such contracts have been made, or any compensation stipulated for. I do not know how, nor when, the men were to be paid their wages. I have no knowledge of Roberts, or either of the other defendants, furnishing any supplies for said operations. Nor do I know whether Roberts gave any directions to said men relative to said operations and explorations; nor that he has paid said men any moneys whatever on account of their services. I do not know that said Roberts, or either of the other defendants, ever had any control over said operations and explorations.

6th cross. I did not explore any sections of said township. I merely went round the exterior lines thereof. I went for the proprietors of the town, as before stated. Edwin Rose, of Thomaston, whom I found in the woods, went with me. I believe I charged the proprietors three dollars a day. It was paid out of the proceeds of the trespass timber. In going round there we found about eighty thousand feet had been cut by a person who had no permit. I reported to the proprietors that I found this timber; and that on examination of it I found it to be very sound, and a good lot of timber, and that the timber in the immediate

vicinity also appeared to be sound. I have never heard Roberts, or either of the other defendants, say anything in regard to the object of the explorations by the men, so far as the same were connected with the testimony in this suit, or otherwise. I made no estimate of the quantity of merchantable pine timber on any section. I have never observed any trees cut on the township which were rotten inside, without any indications, externally, that they were rotten. I do not know that most of the large trees cut on said township were rotten. What I saw was the large timber pine, and not sapling timber. I have not seen any other timber that was cut there. Sapling timber, as it is generally termed, is very much smaller than the timber pine, and more sap on it. Pumpkin pine is the largest and softest kind of pine. Timber pine is a large kind of timber, but not so soft as pumpkin pine. It differs only in the age, perhaps. That is my opinion, from what I have heard and learnt from others.

7th cross. I have no knowledge that John Towle has been in the employment of either of these defendants since the commencement of this suit, nor of any compensation paid or agreed upon.

8th cross. None of these interrogatories or cross interrogatories have been exhibited to me by any one before giving my deposition, and only by the commissioner.

LEONARD JONES.

Subscribed and sworn to June 9, 1843, before me,
FRED. HOBBS, *Commissioner.*

Answers of Aaron Babb, a witness produced and examined on the part of the defendants.

To the first interrogatory. I am thirty-two years of age, reside in Orono, and am a lumberman.

To the second interrogatory. I was employed on said township during the last logging season. I went there under a permit from Winslow and Ordway to Moses Babb and myself. The permit was for the present logging season. We remained there at work with teams, from the 25th December, 1842, to April 12, 1843. We started from Orono with a crew of seven men, on the 28th October, 1842, and reached there about the 5th November, and made preparations for lumbering, cutting roads, building camps, and exploring for timber. The teams came on with fourteen more men, and we got to work about the 25th December, 1842. They all continued at work there till we came out, leaving ten men there to drive.

To the third interrogatory. By Colonel Leavitt's scale we cut and hauled about fourteen hundred and fifty thousand feet during the season. It was of a good quality of timber, some of the first, some of the second, and some of the third quality. Also, some of the fourth quality, if the quality of the logs is to be determined by the number, as boards are at Bangor. It is impossible for me to fix any particular quantity or quality on each lot or section; but I give my opinion about

it; I kept the run of it, as we went along. On section No. 9, we hauled, according to Leavitt's survey, two hundred and fifty thousand. It was very good lumber. On No. 10, fifty thousand feet. On No. 11, five hundred thousand feet. On No. 15, three hundred thousand. On No. 16, one hundred thousand. On No. 17, two hundred and fifty thousand. The timber on No. 11 was rather poorer than on the others. The others were about alike in quality of timber. We did not cut all the timber on either of the sections, but selected the best. Our permit was for one-half the lumber, and we, of course, selected the best trees. I should think there could now be cut and hauled from No. 11, of logs that would make boards of poorer quality, but such as would pay for manufacturing, five hundred thousand feet; from No. 10, two hundred and fifty thousand; from No. 17, seventy-five thousand; from No. 16, I should think, probably, a hundred thousand; from No. 10, two hundred and fifty thousand; from No. 15, three hundred thousand; from No. 9, two hundred thousand; each of like inferior quality.

To the fourth interrogatory. I have made explorations on said township; it was on first of March, 1843, at my own suggestion, and for my own satisfaction; no one requested me to explore there. I explored Nos. 14, 13, 7, 1, 2, 3, and part of 9 and 8; I have been on every lot of the two north ranges, more or less I examined with a view to operate there another winter. I merely travelled through the timber to see how much I could see, and the quality of it, examining trees as I went along; I should think it likely I examined five hundred trees. I found some very good timber, and a large quantity of it that was good; I don't know as I ever made up my mind how much there was of it. I spent two days exploring those sections with Richard Lord; our exploration was thorough, so far as we went. I also was on the line of Nos. 20 and 21, 22 and 23, in November, and by climbing I could see a large body of timber on Nos. 27, 28, 29. I have seen pretty much the whole town from the high land, and it appeared as though there were a great many pine mixed with other trees, throughout the township.

To the fifth interrogatory. There is a good chance to haul, and to get lumber to market from this township; I should think ten millions of good timber might be got from the town, including what we got, and has before been hauled.

Cross examined on the part of the complainant.

To the first cross interrogatory. I acted for myself and partner, under a permit from Winslow and Ordway. No contract was ever made between me and said Roberts, Emerson, Farrar, Norcross, or Mason, in regard to lumbering on or exploring said town; nor have I any such contract. I was not paid any thing for lumbering or exploring by any person; our permit provided that we were to have half the logs delivered at the boom. We had liberty to select our own trees; but, if we cut one, we were under contract to haul all there was in it that would make No. 4 boards. This was from Winslow and Ordway. I had some talk with Amos M. Roberts before I went on; he told me if I found a chance

to suit me on exploring, I could operate there. Mr. Emerson, Mr. Farrar, and Mr. Jones, told me the same. Roberts, nor Emerson, or any one else, ever paid me a cent for operating or exploring there. I have had no conversation with Mr. Roberts in regard to my testimony since my return; I have not seen him. Mr. Emerson merely requested me to come before you, (the commissioner,) and tell you what I knew about the township. Mr. Jones also made the same request; as also Mr. Rowe. No one ever paid me any thing for giving my testimony.

To the second cross interrogatory. I had the principal part of my talk with Leonard Jones, before I took a permit from Winslow and Ordway. I was to go on there, and cut and haul as my permit bound me to do; he gave me the privilege of going up there, and exploring for myself, before I took the permit; if I liked the chance I might go; if I did not, he was not to pay me any thing. I don't know as any one was named, for whom he was acting. Jones has never paid me any thing for my services in exploring or lumbering there. No receipts were given by me. We received our supplies, in part, from Winslow and Ordway, and Winslow and Jones; we furnished part ourselves; I furnished teams, and hauled on our own supplies. We settled with Winslow and Ordway for their bill, also with Winslow and Jones.

To the third cross interrogatory. I suppose we should call seven-eighths of the trees that we cut sound. If we get one log that is sound from a tree, we call it a sound tree; if we get none, we call it a rotten tree. There is no tree that grows that is perfectly free from rots, stains, knots, and shakes; quite a number of the trees cut by us were unsound or rotten. We did cut down perhaps fifty trees which proved to be rotten, but which appeared sound. *Choncos* is a rotten knot, and always appears on the outside of defective or *conchosy* trees. "Timber pine" is a tree of larger growth and coarser bark than a "sapling pine." "Pumpkin pine" is a tree of soft wood, thin sap, and bark of a light color. "Sapling pine" is a tree of green thrifty top, with very thick sap, and fine smooth bark. I should think seven-eighths of the pine cut by us was timber pine. I don't recollect that we cut more than two trees, this winter, of pumpkin pine. About an eighth of it is sapling pine. We cut timber from sections numbered nine, ten, eleven, fifteen, sixteen, and seventeen. On No. 9, two hundred and fifty thousand; on No. 10, fifty thousand; on No. 11, five hundred thousand; on 15, three hundred thousand; on 16, one hundred thousand; on 17, two hundred and fifty thousand, were cut by us. Caleb Leavitt, of Athens, scaled the timber in the woods; I explored the sections numbered from 1 to 17, inclusive; also, have been on the lines of 21, 22, and 23. Leonard Jones was not in company with me when I explored.

To the fourth cross interrogatory. I was in no other way connected with Winslow and Jones, or Winslow and Ordway, than in getting some supplies from both firms, and taking a permit from Winslow and Ordway, as before stated. I had no connexion with Hezekiah Winslow alone; he did not accompany me in exploring said township. Winslow

took no interest in said operations or explorations, to my knowledge; he came out there to see us.

To the fifth cross interrogatory. Four teams were employed on said township last winter; they were all put there on shares. There were from thirty-five to forty men employed there during the last lumbering season. A. & M. Babb employed about twenty; Cummings, Douglas & Company employed the rest. We employed Asaph Conner, David Lord, John Parminster, George Chace, Ephraim Howe, John Seal, David Lunt, Daniel Conner, James Hussey, Augustus Briggs, George Fellows, Horace Emery, Augustus Hines, Benjamin Verial, Richard Lord, Lewis Mayo, Hosea Hurd, Leonard Watson; there were four of the firm of Cummings, Douglas & Company, to wit, the two Cummings, William Douglas, and William Davis; also Lowden Brown, John Mann, Joseph Day, [and] several others, whose names I do not know. They received from twelve to twenty-four dollars per month, and were paid by A. & M. Babb, in part, and in part by Cummings, Douglas & Company.

To the sixth cross interrogatory. They were not exhibited to me by any one before testifying.

AARON BABB.

Subscribed and sworn to, April 25, 1843, before me,

FRED. HOBBS,
Commissioner.

Answers of Caleb Leavitt, a witness produced and examined on the part of the defendants.

To the first interrogatory. I am forty-six years of age, reside in Athens, in the county of Somerset, and my business is principally that of a surveyor of lands.

To the second interrogatory. I was employed on said township No. 3, range 13, during logging season of 1843; beginning about the first of January, and ending the twentieth day of April. I was employed there as scaler, to scale the timber cut by Cummings, Douglas & Co., and Messrs. Babb. It was my business to attend to the cutting of the logs, and to see that they were properly cut; and to explore the lots upon which they were cutting, and to examine the timber and see what there was there. I was so employed by Leonard Jones.

To the third interrogatory. By referring to my scale book, I find the whole quantity cut by both crews, Cummings, Douglas & Co., and Babbs'; I find the whole amount cut was two million four hundred and twenty-seven thousand and seventy-eight feet; the quality was very good. There was cut on section No. 23, one hundred and eighty-three thousand six hundred and eighty-five feet. The quality was very good; as good as any timber that was cut on the township. There were only three trees cut on number twenty-seven, measuring four thousand five hundred and seventy feet; the quality was very good, large, sound timber. On number thirty there were cut forty-two thousand seven hundred and seventy-one feet. The quality of this was not quite so good;

there was more shore timber; that is, timber that grew on the borders of the lake. On lot number fifteen, there was cut three hundred and eighty thousand three hundred and fifty-one feet. The quality was good; it was first rate timber. I have not the exact quantities on other lots separately, but there was cut on three numbers, twenty-one, twenty-two, and twenty-eight, seven hundred and fifty-six thousand four hundred and thirty-eight feet; I should think the largest third was cut on number twenty-one. The quality of it was very good; as good as those I have named. There was about five hundred thousand cut on number eleven, and two hundred thousand on number seventeen, and about thirty-nine thousand on number nine; about three hundred and thirty-three thousand five hundred and twenty feet on numbers ten and sixteen. About two hundred thousand of the five cut on number eleven, was not so good as the others; it was more knotty, and had some rots; the remainder was of an average quality of the lots before named.

To the fourth interrogatory. I have made explorations on said township. I explored the north tier of lots or sections in said town in 1835, while I was lotting the township north of it, partially, and so far as I could, by being on the line, and occasionally climbing. In the fall of 1841, I traced, and partially respotted, the west line of it, and was across the northwest corner, from Nos. 7 to 2. I was employed by the agents of Maine and Massachusetts to explore the township north of it, and by Warren and others, I think, to explore the Lobster Pond township, west of No. 3, range 13. This was in the fall of 1841. Last December, when I was employed by Mr. Jones to scale, I was requested by Mr. Emerson to look at the timber and see what there was of it, and its character. I did so, as I have already stated. On the first of April I received a letter from Isaac Farrar, saying the Carribou Company wished me to explore lot number twenty-seven. I did so. I took two men with me, and explored it in strips of from twenty to forty rods wide, counting, and generally marking each tree, passing from south to north, and north to south. I put one man on the east line, took my station about fifteen or twenty rods west of him, having the other man a few rods west of me. I then traversed the strip in a zig zag course, east and west, southeasterly, and southwesterly, my men travelling at the same time south, as fast I did, until they reached the south line of the section. In this way I presume I saw every tree; such was my intention. I then reversed the order of exploring; the man who had been on the east line taking the snow-shoe track of the one who had been on my right. And in this way, backwards and forwards, I explored the whole section. I made no other explorations except as I have before stated. On section numbered twenty-seven, I found thirteen hundred and twenty-nine pine trees; I estimated them to contain nine hundred and eighteen thousand six hundred and thirty-six feet. The way I got at this quantity was as follows: Prior to making this exploration I measured logs that had been cut on other lots, at the butts and tops, and took the diameter of them at the butts, and thus formed a rule for myself, to estimate the quantity of a standing tree. I then measured a few

trees, by taking the circumference of the butts, and judging of the height and diameter in several tracts, and made minutes thereof on my shingles. I then divided them into board logs of the usual length, and taking the board scale, and allowing an inch increase for every ten feet, I made the quantity to be nine hundred eighteen thousand six hundred and thirty-six feet, as I before stated. I was on the lot one day, to search out the lines, and take a general survey of the timber, and see how it laid. I then had one man with me. During the three following days, with the two men with me, I made the examination in strips, as before stated. I have made the estimate of the quantities from my shingles since the exploration; if the ground had been bare, and the trees in leaf, it would have taken me four times as long, at least, and the work would have been done with less accuracy. The snow being deep, we passed over the underbrush on snow-shoes, and did the work much quicker than we could otherwise have done. A large proportion of it was poor; I took the estimate of the whole timber, without regard to quality. The exploration was more thorough than any I ever made to ascertain the quantity of timber.

To the fifth interrogatory. I don't now think of any thing material, unless it be my estimate of the quantity of timber left by the operators on the particular parts of the sections where they operated. I examined it, and made an estimate that, with new choppers, as much timber, of nearly as good a quality, could now be taken from those sections, within the limits of their beat or operations, as they took off the last winter. I will, however, except from this remark sections numbered seventeen, sixteen, and twenty-three.

Cross examined on the part of the complainant.

To the first cross interrogatory. I was employed by Leonard Jones; I made no contract with Amos M. Roberts, or William Emerson, Isaac Farrar, Norcross, or Mason, in regard to lumbering; nor any contract in regard to explorations, with either of those persons, nor with any other person. I had nothing to do with lumbering; I have not received my pay for exploring; I made no bargain about it. My usual charge, for two or three winters past, has been two dollars a day and my expenses; I have not yet made my charge to any one; I shall probably make it to Mr. Jones, who employed me there. My directions were to see that the operators did not cut down a tree, and leave it, that would make a log suitable for number four boards; and, if they did, to require them to haul it. They requested me to spend the spare time I had in looking over these lots, and examining the timber. Also, Mr. Farrar requested me to explore number twenty-seven, as I have before stated. I had very little conversation with Mr. Farrar and Mr. Jones before I went on; Mr. Jones brought a copy of the permit to Mr. Farrar's counting room or store, and Mr. Farrar merely remarked that he wished me to see that the timber was cut properly. In the evening of the same day I went with Mr. Farrar to the Bangor House, where we saw Mr. Emerson. Mr. Farrar said to Mr. Emerson, "here is Colonel Leavitt, who

is going to start in the morning for the Cariboo township, have you any thing to say to him before he leaves?" Mr. Emerson replied, addressing himself to Farrar, "no; I don't know that I have. Mr. Leavitt is an industrious man, and will have some spare time to look at the lots, and find out about the timber." I never had any other conversation with any other of the defendants at that time, or before I went on; I believe Mr. Farrar let me have thirteen dollars before I went on, and sent me twenty-five dollars in a letter in March, at Athens; I have had some goods of him on account; I have other business with him, and a long unsettled account. The thirteen dollars was to fit me out for the woods; I have received no other pay than the money above named for my expenses or services the past winter, on said township. I have had no conversation with any of the defendants, except Mr. Farrar, since my return, in regard to my testimony. He said they wanted my testimony as to the quantity cut on each of the lots, and in regard to my explorations; I have been paid nothing for giving my testimony.

To the second cross interrogatory. I received no directions from Leonard Jones, only to keep a particular account of the logs cut on two or three of the lots; I think twenty-eight and twenty-nine. I did not hear him say for whom he was acting; he has paid me nothing; I have given no receipts for moneys paid to me; I received no supplies; none were sent; I settled for none.

To the third cross interrogatory. I cut no trees of any description. There are three kinds of choncos; the blind choncos, which is not easily seen when a tree is standing; it is a defect in the wood, running up and down from the centre of the choncos. There is also the ring choncos, which *which* is a defect running round the tree, in the wood near the surface; this is visible. The choncos affects the tree about the same as the blind choncos, only it is visible, and so distinguishable from the blind choncos; there are more of them visible than blind; five to one. Timber pine is a middling sized pine, with sap of a middling thickness and middling sized top, and not of a thrifty look. Pumpkin pine is the largest kind of pine trees, very thin sap, light dry wood, small top, and partially decayed in the top. Sapling pine is a pine of very thick sap, and large green top. I cut no timber; I scaled the timber; I explored section numbered twenty-seven, and partially the sections numbered twenty-eight, twenty-one, twenty-two, twenty-three, twenty-nine, thirty, fifteen, sixteen, seventeen, nine, ten, and eleven. I explored section numbered twenty-seven thoroughly; the other sections I was through, in the parts principally where they operated. Leonard Jones was not with me.

To the fourth cross interrogatory. I had no connection with Winslow and Jones, or Winslow and Ordway, nor with H. Winslow. H. Winslow did not accompany me, nor take any interest in my explorations, or in the operations there, to my knowledge.

To the fifth cross interrogatory. Four teams were so employed there; I don't know who hired them. About forty men were employed there I don't know who employed them, nor the names of all. Mr. Cum-

mings' crew were the two Cummings, two Douglases, Davis, Foss, Eddy, and others. I don't know what wages the men received, nor who paid them.

To the sixth cross interrogatory. They were not shown to me before testifying.

CALEB LEAVITT.

Subscribed and sworn to, April 26, 1843, before me,
FRED. HOBBS, *Commissioner.*

Answers of Hezekiah Winslow, a witness produced and examined on the part of the defendants.

To the first interrogatory. I am thirty-two years of age, a merchant of Bangor.

To the second interrogatory. I was interested in said lumber operations on township No. 3, range 13, the past winter. On the thirteenth day of December, 1842, I, as one of the firm of Winslow and Ordway, entered into a contract with Leonard Jones to operate on said township. Said contract was signed by Winslow and Ordway and Leonard Jones. It was a permit from Jones for us to enter and operate upon the following lots, to wit, Nos. 5, 10, 11, 21, 22, 23, 27, 28, 29, 30, and all that part of No. 16 and 17 lying north of the water of the Cariboo lake. It had the usual stipulations as to the mode of cutting, scaling, and driving. We were to put on four or more ox teams, and a sufficient number of men to operate. We were to give one-half the logs cut on said township, in quantity and quality, for stumpage, and to deliver them to said Jones, at Veazie's boom in Oldtown, when driven. We afterwards obtained from Jones verbal permission to operate, in the same manner, and on the same terms, on the balance of sections numbered 16 and 17, by putting on more teams. And also, if necessary, to go upon Nos. 15 and 9.

To the third interrogatory. Four ox teams have been employed there under said contract; part of the time six oxen, and part eight oxen to a team. About twenty-five hundred thousand feet of pine logs, board measure, have been cut there, and hauled under said contract. It is the best quality of pine timber. Estimating it at the prices at which we sold logs in 1842, it is worth from ten and a half to eleven dollars per thousand feet. There having been no sales for 1843, I cannot speak in regard to the market prices of 1843. We have been offered and refused ten dollars for it.

To the fourth interrogatory. I have been on to said township; I was on it in February, 1843. There is a great deal of pine timber upon the town. A good deal of it is sound, and a good deal of it is rotten. It is very thick in some places. The largest quantity of the timber is upon the west part of the township, on what is called "Pine stream."

To the fifth interrogatory. I should think it would take eight men three months, certainly, to make the particular examination specified in this interrogatory. After laboring three months in this way they might form a pretty correct opinion of the quantity, but could not judge cor-

rectly as to the quality of it. As an illustration of this I would state, that we have this year cut and hauled from certain lots on this township more than three times the quantity of merchantable pine timber, worth ten dollars at the boom at least, than there was estimated to be thereon by the committee of the legislature who explored it last summer, and who made a very close calculation upon it.

To the sixth interrogatory. I do not know anything, unless it be the interference of John Doggett, the plaintiff, through Samuel Smith of Bangor, in regard to the logs. Before we went on, said Smith said that they should obtain an injunction against us, and that we had no right to go there. In March last Smith shewed me a paper purporting to be a power of attorney from John Doggett, authorizing him to sell or dispose of his interest in the logs which we had cut. Since that time we have been negotiating with Smith for said Doggett's interest in said logs.

Cross examined on the part of the complainant.

To the first cross interrogatory. A. and M. Babb, Cummings, Douglas and Company, and Ordway, were the only persons interested in said operations with me. The men were employed by Babbs and Douglas and Company, about forty; from forty to fifty in all. Jones, of the firm of Winslow and Jones, had no interest in the operations. Winslow and Ordway have furnished money and supplies for carrying on the operations. I annex copies, marked A and B, of the only contracts made with Winslow and Ordway, or myself, and the men engaged in said operations. I never made any contract with any one, in writing, in regard to exploring said township. We told Messrs. Babb if they would go on and explore, they might share in the permit. They were to be paid nothing for exploring.

To the second cross interrogatory. Amos M. Roberts did not alone, or jointly with the other defendants, apply to me, or to Winslow and Ordway, to become interested in said operations. We were not induced to undertake the same at the suggestion of said Roberts, or either of said defendants. We were not connected with Roberts, or either of said defendants, as their agents, in making said operations. Nor were the persons associated with us so acting, to my knowledge; nor were we or they acting for or on account of said Roberts, or either of said defendants, in any way. Neither Roberts or the other defendants have indemnified us, or agreed to do so, in said operations; nor have they paid or agreed to pay us any sum or compensation on account of our connection with said operations. There was never any agreements between Roberts and us, or our associates, in regard to our operations, nor with any other of said defendants, excepting Mr. Emerson, touching or in any way connected with said operations or explorations, either verbal or written.

To the third cross interrogatory. No money or other consideration was ever paid by said Roberts, or other defendants, on account of said operations or explorations. The supplies were furnished therefor by Winslow and Ordway. Possibly Winslow and Jones might have sold them a bill of a hundred dollars or so. Said supplies are charged on the

books of Winslow and Jones, and Winslow and Ordway, to Cummings, Douglas and Company and A. and M. Babb. They are not charged to said Roberts, or either of said defendants. They are charged as stated, and not otherwise.

To the fourth cross interrogatory. I do not know that said Leonard Jones, in behalf of said Roberts, and other of the defendants, ever made any contract with any one. The only contract I know of on the subject was the one to which I have already referred. It is hereto annexed, marked C, a copy. We received no instructions from said Roberts or other defendants, in regard to the manner of cutting the lumber. The permit contains all the agreements between the parties in regard to the manner of cutting. We applied to Mr. Emerson for the permit in the first place, and our negotiations were with him and Mr. Jones. When the terms of it were settled, the contract or permit was made by Mr. Jones, agreeably to our negotiations with Emerson and Jones. We did not communicate any particular directions to the men associated with us in operating as to cutting, beyond what is in papers A and B, annexed, and copied. I received no directions from Leonard Jones as to explorations whatever; and the only provisions in regard to cutting are contained in the paper annexed, marked C. We have given none other directions to the men engaged in lumbering than what are in the permits annexed and copied, marked A and B. Nothing in regard to exploring passed between us, other than what I have already stated, about their going on before they took the permits.

To the fifth cross interrogatory. I was in said township in February, 1843, during the past logging season. I went at the request of no one, but to look after the teams, and to see how they got along. I went at the expense of Winslow and Ordway. I was on the township about four days at that time. I did not pretend to explore it to any great extent beyond the limits of our permit, but did some. During that time I was on all sections named in our permit, except No. 30, but I cannot state how long I was on any one section. I cannot tell the quantity of timber on any one section. There was some good timber on each section. A majority of the good timber had been hauled from some of the sections when I was there. I can say no more than I have said as to the quality of the timber. I went from Bangor to the township in company with a Mr. Doggett, of this city. I received nothing for my services as an explorer on said township. I cannot state the names of all the men engaged in said lumbering operations, but will so far as I can recollect them : Aaron Babb, Moses Babb, Andrew Babb. Several, whose Christian names I do not remember, or know, such as Lord, Seal, Littlefield, Hurd, Vinal, Lunt, Lord, two Cummings, two of the name of Douglas, Davis, Mann and others, whose names have escaped me. None of them were engaged in any explorations, otherwise than as I have already stated.

To the sixth cross interrogatory, I answer, no, neither.

HEZEKIAH WINSLOW.

Subscribed and sworn to, April 24, 1843, before me,

FRED. HOBBS, *Commissioner.*

(A.)

This memorandum of an agreement, made the 13th day of December, A. D. 1842, by and between Winslow and Ordway, of Bangor, county of Penobscot, and State of Maine, of the one part, and A. and M. Babb, of Orono, in the county and State aforesaid, of the other part, witnesseth: That said Winslow and Ordway, on their part, for the consideration hereinafter expressed, hereby grant to the said A. and M. Babb permission to enter upon the several lots numbered five, ten, and eleven, also all of that portion of numbers sixteen and seventeen lying north of the waters of the Cariboo lake, in township No. 3, range 13, of townships west from the east line of the State, and there to cut down and transport therefrom such pine timber trees as they may think fit and proper during the ensuing season for logging. And the said Winslow and Ordway hereby agree that they will appoint some suitable person to survey and scale said timber, and pay the wages of the person by them appointed; and the said A. and M. Babb, on their part, hereby agree that they will, in due season, enter upon the aforesaid lots, and employ thereon during said season two ox teams, and a suitable number of men, in cutting and transporting therefrom the timber aforesaid; that they will haul all such logs from the trees they may cut, which will average equal to number four boards, Bangor survey; that they will deliver to said Winslow and Ordway, at Veazie's Boom, so called, one half in quantity and quality, of all the logs which may be driven into said boom in each year, that may be cut under this permit, until all of them are driven into said boom; that they will furnish and provide board for said scaler while in said Winslow and Ordway's employ in scaling said timber; that they will give due notice to said Winslow and Ordway, or their agent appointed to survey the same, at what time and place the timber cut by them shall be deposited, and ready for inspection and survey, and will give information of all the marks and the numbers of said logs by them cut; and in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity and manner of cutting; that they will use all due diligence in the season of driving, to get all of said lumber into said boom. Said A. and M. Babb further agree that all the right, interest, and property in all the lumber cut as aforesaid, shall be and remain in said Winslow and Ordway's hands until they shall have performed their several agreements aforesaid, and until all said Winslow and Ordway's bill for carrying on said operation are paid. In witness whereof the said parties have to this, and one other instrument of the same tenor and date, set their hands, the day and year first above written.

(Signed) A. & M. BABB,
WINSLOW & ORDWAY.

Witness: T. B. JONES.

(B.)

This memorandum of an agreement, made the 13th day of December, A. D. 1842, by and between Winslow and Ordway, of Bangor, in the county of Penobscot, and State of Maine, of the one part, and Cummings and Douglas and Company, of Eddington, in the county and State aforesaid, of the other part, witnesseth: That the said Winslow and Ordway, on their part, for the consideration hereinafter expressed, hereby grant to the said Cummings, Douglas and Company, permission to enter upon the several lots numbered 21, 22, 23, 27, 28, 29, and 30, in township No. 3, range 13, of townships west from the east line of the State, and there to cut down, and transport therefrom, such pine timber trees as they may think fit and proper, during the ensuing winter season, for logging; and the said Winslow and Ordway hereby agree, that they will appoint some suitable person to survey and scale said timber, and pay the wages of the person by them appointed; and the said C. Douglas and Company, on their part, hereby agree that they will in due season enter upon the aforesaid lots, and employ thereon during said season two ox teams and a suitable number of men, in cutting and transporting therefrom the timber aforesaid; that they will haul all such logs from the trees they may cut, which will average equal to number four boards, Bangor survey; that they will deliver to said Winslow and Ordway, at Veazie's Boom, so called, one half in quantity and quality of all the logs which may be driven into said boom in each year, that may be cut under this permit, until all of them are driven into said boom; that they will furnish and provide board for said scaler, while in said Winslow and Ordway's employ, in scaling said timber; that they will give due notice to said Winslow and Ordway, or their agent appointed to survey the same, at what time and place the timber by them shall be deposited, and ready for inspection and survey, and will give information of all the marks, and the number of logs by them cut; and in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity and manner of cutting; that they will use all due diligence in the season of driving, to get all of said lumber into said boom. Said Cummings, Douglas and Company further agree, that all the right, interest, and property, in all the lumber, cut as aforesaid, shall be and remain in said Winslow and Ordway's hands, until they shall have performed their several agreements aforesaid, and until all of said Winslow and Ordway's bills are paid, for carrying on said operation. In witness whereof the said parties have to this, and one other instrument of the same tenor and date, set our hands, the day and year first above written.

(Signed) CUMMINGS, DOUGLAS & CO.
WINSLOW & ORDWAY.

Witness: S. P. STRICKLAND.

(C.)

This memorandum of an agreement, made the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-two, by and between Leonard Jones, of Bangor, in the county of Penobscot, and State of Maine, of the one part, and Winslow & Ordway, of Bangor, in the county and State aforesaid, merchants, of the other part, witnesseth:

That the said Leonard Jones, on his part, for the consideration hereinafter expressed, hereby grants to the said Winslow & Ordway permission to enter upon the several lots numbered five, ten, eleven, twenty-one, twenty-two, twenty-three, twenty-seven, twenty-eight, twenty-nine, and thirty; also, all that portion of numbers sixteen and seventeen lying north of the waters of the Cariboo lake, in township No. 3, range 13 of townships west from the east line of the State, and there to cut down and transport therefrom such pine timber trees as they may think fit and proper, during the ensuing season, for logging. And the said Jones hereby agrees that he will appoint some suitable person to survey and scale said timber, and pay the wages of the person by him appointed. And the said Winslow & Ordway, on their part, hereby agree that they will, in due season, enter upon the aforementioned lots, and employ thereon, during said season, four or more ox teams, and a sufficient number of men in cutting and transporting therefrom the timber aforesaid; that they will haul all such logs from the trees they may cut, which will average equal to number four boards, Bangor survey; that they will deliver to said Leonard Jones, at Veazie's Boom, so called, one-half in quality and quantity of all the logs which may be driven into said boom in each year, that may be cut under this permit, until all of them are driven into said boom; that they will furnish and provide board for said scaler, while in said Jones's service, in scaling said lumber; that they will give due notice to said Jones, or his agent appointed to survey the same, at what time and place the timber cut by them shall be deposited and ready for inspection and survey, and will give information of all the marks, and the number of said logs by them cut; and, in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity and manner of cutting; that they will use all diligence, in the season of driving, to get all of said lumber into said boom. Said Jones further agrees, that said Winslow & Ordway may transfer this permit to Cummings, Douglas & Company, and A. & M. Babb, but to no others. Said Winslow & Ordway further agree, that all the right, interest, and property in all the lumber cut as aforesaid, shall be and remain in said Leonard Jones, until they shall have fully performed the several agreements aforesaid. And the said Leonard Jones covenants and agrees, that he has good right to permit the afore described land.

In witness whereof, the said parties have to this, and one other in-

strument of the same tenor and date, set their hands the day and year first above written.

(Signed) LEONARD JONES,
WINSLOW & ORDWAY.

Witness: J. B. JONES.

UNITED STATES OF AMERICA, *Maine district, ss:*

First circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty-three, to Frederick Hobbs, of Bangor, in said district, esquire:

[L. S.]

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Edwin Rose, Caleb Leavitt, Hezekiah Winslow, and George W. Pickering, witnesses to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett, of Boston, Massachusetts, is complainant in equity vs. William Emerson and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto annexed.

Witness the honorable Roger B. Taney, at Portland, this fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-three.

JOHN MUSSEY, *Clerk.*

UNITED STATES, *district of Maine, ss:*

Pursuant to the within commission, to *be* directed, I appointed certain days on which the within named witnesses came before me, and each witness, while present before me, and apart from all other persons, was carefully examined by me, on oath, touching the premises; and the testimony of each witness was reduced to writing by me, and by each witness subscribed in my presence. And the execution of this commission appears in the depositions of Edwin Rose, Caleb Leavitt, Hezekiah Winslow, and George W. *Winslow*, hereunto annexed, and are herewith returned, with my doings, under seal, to the circuit court

of the United States for said district, next to be holden at Portland, on the first day of May next.

Witness my hand, at Bangor, this first day of January, A. D. 1844.

FRED. HOBBS, *Commissioner.*

Defendants' interrogatories to Edwin Rose, a witness produced and examined on the part of the defendants.

1. Please state your occupation and place of residence.

2. Were you employed to scale logs, cut in the season of 1842–'3, on township No. 3, 13th range west of the monument? If yea, state by whom you were so employed; at what time you scaled the logs, and in what manner; whether or no in the usual manner, and for the purpose of ascertaining, honestly, the quantity and quality of the timber cut, the number of logs you scaled, their quality, and the number of feet, board measure, contained in them, distinguishing between those cut by Babb and those cut by Cummings.

3. How often have you been employed to scale logs, and when, where, and by whom?

3. How far is said township No. 3, 13th range, from Bangor? In driving that distance, what kind of logs are those usually left scattered on the way, the larger or smaller?

JAMES S. ROWE,
Solicitor for defendants.

Received and filed November 1, 1843, and copy served with notice on the same day.

Plaintiff's cross interrogatories to Edwin Rose.

1st. Where did you scale the logs referred to in the defendants' second interrogatory, and what were the marks on the logs cut by Babb, and on the logs cut by Cummings? Please have the marks put down on your deposition, and also explain them in language.

2d. State whether or no, in scaling the logs referred to in defendants' second interrogatory, you acted under any contract *with either of the defendants*, and if so, *which* of them; what compensation you received for your services, by whom such compensation was paid; and if you state there was a contract with either of the defendants, then state whether such contract was in writing. If so, and you have the same, annex it to your deposition. If you have not the original, annex a copy thereof; if you have neither original or copy, then state accurately the contents thereof, both as to parties and the terms thereof, fully and particularly, and where the original now is.

3d. State whether or no you received any compensation, gratuity, or reward from either of these defendants, or from any one acting in behalf of either of them, for your services in scaling said logs. If so, when, from whom did you receive it, and what was the amount thereof?

4th. State whether or no any person, (other than such as you shall name as your employer in answer to the defendants' second interrogatory,) ever gave you any directions or instructions as to the manner in

which you should scale said logs, or paid you any considerations for your services in scaling such logs. If so, who, and when, and what instructions were so given; and what was the amount of the consideration paid for your services?

5th. Do or not all scalers, in scaling logs, deduct from the actual measurement of such logs such amount in feet for "shakes, rots, and other defects," as will *in their judgment* leave the remaining contents of the log sound?

6th. Have you, or not, seen the permits under which Babb and Cummings cut the logs scaled by you? State when, where, and in whose possession you saw the same, and who now has the same, or either of them. If you have them, annex them to your deposition; if not, state the contents thereof, the parties thereto, as owners and as operators; whether by the terms thereof the operators were confined to certain sections of the township, or whether they extended to the whole township; and particularly *how said Babb and Cummings were to pay the stumpage;* whether by money or a *portion of the logs cut by them*; and if so, what portion; and the other contents of such permits, as well as you can recollect.

7th. Had you or not any interest in the lumbering operation in the season 1842–'3, on township No. 3, range 13? If so, state what your interest was, and all the interest you had therein, or in the logs.

8th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Solicitors for complainant.

Received and filed Nov. 14, 1843.

Defendants' interrogatories to George W. Pickering, a witness produced and examined on the part of the defendants.

1. State your age, occupation, and place of residence.

2. Did you purchase the logs cut by Cummings, in the winter of 1842–'3, on township No. 3, 13th range? If yea, state at what price, how many logs, their measurement, and by whom they were scaled.

3. Have you had said logs manufactured? If yea, state, if you can, how many feet of boards, how much dimension stuff, in board measure, and how many thousands of shingles have been manufactured from them.

4. How much does William Howard usually deduct from the actual measurement of logs, as an allowance for "shakes," rots, and other defects? How much did he deduct in the logs in question?

5. Do you, or not, generally, from logs scaled by said Howard, obtain as many feet of good boards as the whole logs measured according to his "scale," leaving the "scoots," and poor fours as clear gain to the purchaser? Are not the "scoots" and poor fours so obtained suffi-

cient, or more than sufficient, to pay the expense of manufacturing? How was the case with regard to the logs in question?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed November 1, 1843, and copy served with notice on the same day.

Plaintiff's cross interrogatories to George W. Pickering.

1st. If, in answer to the defendants' third interrogatory, you state the quantity of boards, dimension stuff, and shingles, sawed from the logs purchased by you, cut by Cummings, on No. 3, range 13, in the winter of 1842–'3, then state who surveyed such boards, dimension stuffs, and shingles for you; and whether you *testify from such survey*, and without having been a witness to the survey *yourself*.

2d. If in answer to the sixth interrogatory of the defendants you state that you do, generally, from logs scaled by William Howard, obtain as many feet of good boards as the whole logs measure, then state whether the same is not equally true of all logs purchased by you by whomever scaled, and does it or not arise from greater economy than usual on the part of those who manufacture your lumber.

3d. State why the individuals who manufacture your logs, usually make a saving of "scoots," and "poor fours," sufficient to pay the expense of manufacturing the logs sawed by them. Do they or not save in saw scarf, and why; and do they or not saw the slabs so close as to save largely in that way, or how is it done? State fully and particularly.

4th. Do you or not, generally, from logs scaled by *any scaler*, obtain as many feet of good boards as the whole logs measure, according to his scale, leaving the "scoots," and poor fours as clear gain to the purchaser; and are not the "scoots," and poor fours, so obtained, sufficient, or more than sufficient, to pay the expense of manufacturing? If you answer this interrogatory affirmatively, state your reasons for such saving, and whether such saving is *generally* made at the mills on the Penobscot river, and why not. State whether or no the person or persons who sawed the logs purchased by you of Cummings, made a greater saving than is made at any other mills on the Penobscot river, and why.

5th. State where and by whom the logs, purchased by you of Cummings, were sawed; and under whose direction as owners or lessees of the mills, and with whom you made your contract for sawing such logs.

6th. State whether or no the freshet, on the Penobscot river, last spring, was unusually large; and did or not nearly all the logs, cut upon the west branch of that river come to market last spring? State whether or no the freshet on the Penobscot river last spring was so high as to afford a better chance for a "clear drive" to market than for many years before.

7th. State whether or no, when the freshet is very high upon the Penobscot river, there are many places in the woods of low land and ba-

sins filled with water, where the water overflows the ordinary channels of the river, so that logs coming down the river float out of the channel and lodge among trees in the basins of water made by such overflowing of the water beyond the channel of the river; and, if so, is not more care taken in such cases by the river drivers to dislodge from among the trees the *large logs* than the small ones; and do or not the river drivers frequently *leave small logs behind* on account of the expense of dislodging them from among the trees in such basins of water.

8th. Are, or not, river drivers always paid a stated price per day, or month, for driving logs to market?

9th. Have you, or not, ever seen the permits under which said Cummings cut the logs so purchased by you? Have you ever had an assignment of such permit? If so, and you now have the same, annex it to your deposition; or, if you have not the original, but a copy, then annex said copy to your deposition; if you have neither the original or a copy thereof, then state, fully as you can, who were the parties to such permit; who as owners, and who as operators; whether, by the terms of such permit, the operators were confined to certain sections of said township, or whether it extended to the whole township; and particularly how said Cummings and his associates, if any he had, were to pay for stumpage; whether in cash or by a portion of the logs cut by him. If so, by what portion, and such further particulars as you may recollect?

10th. Do, or not, all scalers, in scaling logs, deduct from the actual measurement of such logs such an amount, in feet, for "shakes, rots, and other defects," as will, in their judgment, leave the remaining contents of the logs sound?

11th. State whether or no from large logs, when manufactured into boards, the quantity of board-measure obtained therefrom usually and generally exceeds the quantity as ascertained by the scale of the logs, and why. Are large logs more apt to hold out when manufactured than small ones, as to quantity, in board-measure? If yea, why?

12th. Had you, or not, any interest in the lumbering operations in the season of 1842–'3, on township No. 3, range 13th? If so, state what your interest was, and all the interest you had therein.

13th. If, in answer to defendants' second interrogatory, you undertake to state the measurement of the logs you purchased, state whether you have any personal knowledge of their measurement, or any other knowledge than that derived from the report of their measurement from the scaler, or from his bill of said logs.

14th. If, in answer to defendants' fourth interrogatory, you undertake to state how much William Howard usually deducts from the actual measurement of the logs, as an allowance for "shakes, rots, and other defects," then state from what source you derive your information that he makes such deductions, and whether you know anything of his *usual* practice in this respect, except from general report. If you undertake to state how much he deducted from the logs in question, then state what your means of knowledge are, as to the amount of the de-

duction so made by him. Were the logs you purchased of Cummings, and had manufactured, large or small logs.

15th. What were the marks on the logs you had of Cummings? Please put a copy of them on your deposition, and interpret them.

16th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Solicitors for the complainant.

Received and filed November 14, 1843.

Defendants' second interrogatories to Hezekiah Winslow, a witness produced and examined on the part of the defendants.

1. Have you given a deposition in this case?

2. Did you purchase of the owners the logs cut in the winter of 1842–'3, on township No. 3, 13th range? If yea, at what price? What portion of them did you have manufactured, and by whom was that portion cut? What portion did you sell, to whom, and at what prices?

3. Please state, if you can, the number of logs so manufactured by you; their measurement, according to the survey by which you purchased; the quantity of boards sawed from them; the quantity of dimension stuff, in board-measure, and quantity of shingles; and how many thousands of shingles it takes to make a thousand feet of lumber, board-measure.

4. Were the boards from these logs sawed thicker than usual? If yea, state how much difference that made in the quantity manufactured.

JAS. S. ROWE,
Solicitor for defendants.

Received and filed November 1, 1843, and copy served, with notice, on the same day.

Plaintiff's cross interrogatories to Hezekiah Winslow.

1st. If, in answer to the second interrogatory of the defendants, you state that you did purchase of the owners the logs cut upon township No. 3, range 13, in the winter of 1842–'3, state of what owners you purchased, and how you paid them for such logs; whether in cash, or if you received any portion of such logs on account of the indebtedness to you of any such owners, then state who, and all of the owners of such logs who were indebted to you on account of which you received such logs, and *how and when such indebtedness arose.*

2d. State who scaled such logs as you purchased, at the time you purchased them; how many logs you thus purchased, and how many of them you sold, and how many of them you had manufactured; and if all you purchased were not sold or manufactured by you, why.

3d. State where such logs were which were purchased by you, *at the time* you purchased them.

4th. Were the logs which you had manufactured *large, and of better quality* than those which you sold; and why did you sell a portion of the logs so purchased by you, and to whom?

5th. Were any of these defendants in any way interested in the purchase of those logs cut on said township, so made by you? If so, who of them, and in what way interested?

6th. Where, and by whom, were the logs which you so purchased manufactured? Which were manufactured by you? At whose mills?

7th. If, in answer to the defendants' third interrogatory, you undertake to state the quantity of boards, dimension stuffs and shingles, sawed from the logs manufactured by you, then state what directions were given by you to those who sawed the logs for you, in reference to the manner of their manufacture, as to sawing the logs very close ; *and by whose survey* you testify *as to the quantity of boards, shingles, and dimension stuff; and what means of knowledge you have* that such survey was accurate.

8th. Were the logs sawed into shingles suitable for boards or dimension stuff? If so, why were they sawed into shingles?

9th. Have you ever had an assignment of the permit given by the owners of said township No. 3, range 13, under which the lumbering operations of the winter of 1842–'3 were conducted? Or state whether or no you have ever been instructed, and how, in any permit under which such operations were conducted. If you have, and now have the same, then annex the same to your depositions; or if you have not the original, then annex a copy thereof, if you have any; and if you have neither, then state all the contents thereof accurately, and especially who were the parties as owners of the township, and who as operators; whether, by the terms thereof, the operators were confined to particular sections of the township, and, if so, what sections; or whether they were allowed the whole range of the township; how stumpage was to be paid, whether in cash, or by a portion of the logs cut by the operators, and what portion; and all the other particulars thereof, as well as you can.

10th. Had you any contract with Caleb Leavitt in reference to scaling the logs cut upon said township No. 3, range 13, during the winter of 1842–'3? If so, upon whose request did you make any such contract? Was it or not upon the request of some, and who, of the defendants? And if you state you had such contract, then state fully its terms; or if in writing, annex the same to your deposition; or if you have not the original, then annex a copy thereof, and state where the original is.

11th. Had you or no any interest in the lumbering operations, in the season of 1842–'3, on township No. 3, range 13? If so, state what your interest was, and all the interest you had therein.

12th. If, in answer to interrogatory third of the defendants, you undertake to state the measurement of the logs manufactured by you, and

the quantity of boards sawed from them, the quantity of dimension stuff, in board measure, and the quantity of shingles, then state whether you have any knowledge of the measurement of the logs, other than that derived from the scale bill of the scaler. Were you present at the scaling of said logs by the scaler, and will you undertake to swear, that you so far observed the scaler as to state, of your own personal knowledge, that his scale bill, or report, gave the exact measurement of the logs so manufactured by you? Had you any personal knowledge of the survey made of the boards, dimension stuff, and shingles, so that you can swear that you observed the surveyor so minutely as to testify, that his survey of such boards, dimension stuff, and shingles was accurate?

13th. What were the marks on the logs which you purchased? Let a copy of them appear in answer to this question, and please explain them in language.

14th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

COOLEY & ASPINWALL,
Solicitors for complainant.

Received and filed, November 14, 1843.

Defendants' second interrogatories to Caleb Leavitt, a witness produced and examined on the part of the defendants.

1. Have you given a deposition in this case?

2. If in your former deposition you stated that you were employed to scale logs on township No. 3, 13th range, in the season of 1842–'3, state what instructions you received as to the manner of scaling said logs, and from whom.

3. State for how many years you have been employed as a scaler, and where, and by whom.

4. State whether or no you scaled the logs on No. 3, 13th range, in the usual manner, and for the purpose of ascertaining, accurately, their measurement and quality; and, if no, how you varied from the usual manner, and why.

5. Does your scale bill, in your opinion, show the quantity actually cut and hauled there at that time?

6. How far is said township No. 3, 13th range, from Bangor? In driving logs that distance, what kind of logs are those usually left scattered in the way; and why that kind?

JAS. S. ROWE,
Solicitor for defendants.

Received and filed November 1, 1843, and copy served, with notice, on the same day.

Plaintiff's cross interrogatories to Caleb Leavitt.

1. By whom were you employed to scale the logs cut on township No. 3, range 13, west from the east line of the State of Maine, in the lumbering season of 1842–'3? How long were you upon that township for that purpose, and by whom were you employed; and by whom were you paid for your services; and what compensation did you have for your services; and how much of your time, daily, was occupied in scaling said logs?

2. State whether or no either of these defendants, and, if so, who of them, and when, ever had any conversation, or written correspondence, with you, in reference to the manner in which you should scale said logs, prior to, or subsequent to, your going upon said township for that purpose. If so, state fully and particularly the substance of such conversation, and annex to your deposition such written correspondence, if you have it; and if not, state its substance, and where such correspondence now is.

3. State whether or no you were ever promised or paid any compensation or any gratuity for your services in scaling said logs by either of these defendants, or by any one else, other than Moses and Aaron Babb, and Cummings and his associates; and, if so, by whom, and when, were you paid any such compensation or gratuity; and what was the amount thereof paid you by any and all such persons; and by any and whom of these defendants.

4. State whether or no were you in any way interested in the lumbering operations upon said township, in the lumbering season of 1842–'3; or have you in any, and, if so, in what, way been interested in the logs cut on said township in the lumbering season of 1842–'3.

5. Did or not Winslow and Jones, of Bangor, of which firm Hezekiah Winslow is a member, or did Hezekiah Winslow and Reuben Ordway, of Bangor, have any contract with you in reference to scaling the aforesaid logs? If yea, was such contract in writing, and who now has the same? If you have, annex the same to your deposition; if not, state its substance accurately; and if such contract was not reduced to writing, then state the same distinctly in all its particulars.

6. Have you had any contract in writing with the aforesaid Babbs, in reference to scaling said logs? If so, annex the same, if you have it, to your deposition; or if you have not the possession of the same, then state the *contract* thereof, and where the same now is; or if your contract, if any such was made with said Babbs, was a verbal one, then state the term of the same accurately.

7. Have you any contract in writing with Cummings and his associates, if any he had in the operations on that township, or with Cummings alone, in reference to scaling said logs? If so, and you now have it, annex the same to your deposition; and if you have it not, then state the contents thereof, and where the same now is; or if it was a verbal one, then state the terms thereof accurately.

8. If, in answer to the defendant's interrogatory fourth, you state

that *you* did scale the logs cut upon township No. 3, range 13th, in the usual manner, then state what you mean by the "usual manner," whether you mean the manner *usual with yourself;* if not, what do you mean, and what is such usual manner?

9. Have you ever seen the permits given by the owners of the township under which the aforesaid logs were cut? If so, who were the parties to them as owners, and who as operators; to whom did each permit run, and to whom was authority given by each to cut the aforesaid logs; and had it been assigned, and if so, to whom; state its contents, and when and where you saw it, and in whose possession, and *how the stumpage was to be paid,* whether in cash, or *by a portion of the logs cut by the operators;* and if so, what portion?

10. Was, or not, the freshet on the Penobscot river unusually large last spring, and did, or not, nearly all the logs cut upon the west branch of that river come to market last spring? Do you know that any of the logs cut upon No. 3, range 13, which you scaled, remained behind? If so, how many, and why? Was, or not, the freshet on the Penobscot river so high last spring, as to present a better chance for making, in the language of lumbermen, a "*clean drive*" of logs down the west branch, than for many years before?

11. Where did you scale the logs on No. 3, range 13; on the land where they lay as they were cut down, or at the streams where they were hauled to be driven to market?

12. Were you, or no, ever informed by said Babbs, that of the lots cut by them, and scaled by you, there were many, or some of them, that they should not run to market at all; and do you know that they did not haul to the streams a portion of the logs cut by them on the township, and scaled by you, and why?

13. Were you, or not, ever informed by the said Cummings, or either of his associates, if he had any in his operations, that of the logs cut by him, or them, there were some which they should not run to market at all? And do you, or not, know, that of the logs cut by said Cummings, and his associates, if he had any, and scaled by you, a portion of them were not hauled to the stream, to run to market, and why?

14. If, in answer to the ninth cross interrogatory, you state that you have seen the permits, by authority of which the logs were cut upon that township, which were scaled by you, then state whether, by the terms of the permit, the authority to cut upon said township was confined to any particular sections of said township, or whether it was general, and extended to the whole township.

15. State whether, or no, while you were upon this township, in the season of 1842–'3, did any one come there, on the behalf, or claiming to act in behalf, of these defendants, or either of them, *directing the lumbering operations on said township*, or the explorations thereon; if so, who was it, and when; or did any one come at any time to direct the said Babbs and said Cummings in the operations thereon? If so, who, when they came, and how many times did they come?

16. When the freshet is very high upon the Penobscot river, are there, or *not*, many places in the woods of low lands, and "basins" filled with water, when the water overflows the ordinary channels of the river, so that logs coming down the river float out of the channel, and lodge among trees in such basins of water made by such overflowing of the water beyond the channel of the river; and if so, is not more care taken, in such cases, by the river drivers, to dislodge from among the trees *the large logs* than the small ones; and do, or not, the river drivers frequently *leave small logs behind*, on account of the expense of dislodging them from among the trees in such basins of water, formed by the overflowing of the river?

17. Are, or not, river drivers always paid a stated price per day, or month, for driving logs to market?

18. What were the marks on the logs cut by the Babbs, and what were those on the logs cut by Cummings, on township No. 3, range 13, in the winter of 1842-'3? Let a true copy of the marks of each appear in your answer to this interrogatory, and please explain them in language.

19. Do you know, or can you set forth, any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same, fully and at large, in your answer.

COOLEY & ASPINWALL,
Solicitors for complainant.

Received and filed, November 14, 1843.

Answers of George W. Pickering, a witness examined on the part of the defendants.

First. I am forty-four years of age, a merchant, of Bangor.

Second. I purchased most of said logs; all but a few thousand. I purchased the logs of the different owners. I paid Cummings nine dollars and fifty cents per thousand for his interest, and the other owners about ten dollars and a half per thousand. There were about six hundred and fifty thousand of them, board measure; I don't recollect the precise quantity; there were about thirteen hundred and fifty logs; they were scaled by a Mr. Coburn, of Orono, and Mr. Howard, of Milford.

Third. I have had said logs manufactured; I cannot state the quantity, or quantities, as inquired for, because they were sawed with logs purchased of other people.

Fourth. I cannot state how much deduction William Howard makes in his scale of logs; his principle, or rule, as I understand it, is to scale them so that they will be equal to sound timber, or timber free from rot and shakes; I cannot tell how much Howard did deduct on the logs in question.

Fifth and Sixth. I do, generally, from logs scaled by said Howard, obtain as many feet of good boards as the whole logs measured, accord-

ing to his scale, and sometimes more, leaving the scoots and poor fours as clear gain to the purchasers, but not always. I had an instance last summer, where his scale fell short of the quantity measured or scaled by him. This variation is owing to defects in logs, not discovered or rightly estimated by the scaler. By good boards, in this answer, I mean Nos. 1, 2, 3, and 4, from large logs. The scoots and poor fours so obtained, are sufficient, and a little more than sufficient, to pay the expense of manufacturing the logs into boards. These logs, having been sawed with logs purchased of other people, I cannot tell how many or how valuable the scoots and poor fours were.

Cross examined on the part of the complainant.

First cross. My answer to the defendants' third interrogatory was in the negative; I could not state any quantities for reasons there set forth.

Second cross. All logs purchased by me vary, as do those scaled by Mr. Howard; some overrun, and some fall short, for the same reasons. I think Mr. Amos Davis, who saws my logs, uses more economy than the majority of mill-men on the river, and that the excess is in part owing to his prudent management.

Third cross. The expense of sawing, or manufacturing, is about sixteen and sixpence per thousand. We sell the scoots for about three dollars, and the poor fours about five dollars per thousand. The difference is gained. We do save in the saw scarf, when we saw our best logs, because we saw our best logs with thinner saws than are generally used on the river; but when we saw with the very thin saws, we cannot manufacture so many thousand per day. We save in lumber, but lose in time; but it is, on the whole, more profitable to use the thin saws in manufacturing good lumber. We do slab very lightly, and consequently get a great many poor fours; there is a saving in doing so, but not large.

Fourth cross. The logs purchased by me have been pretty much altogether scaled by Howard and Coburn; I cannot speak of other scalers. The result of their scaling is as I have already stated. I cannot state the saving at other mills on the Penobscot river, nor whether my men made a greater saving than other men at other mills on the river.

Fifth cross. The logs purchased by me were sawed at the city mills, by Amos Davis; Davis was lessee of the mills, and I contracted with him for sawing them.

Sixth cross. I should think the freshet on the Penobscot, last spring, was unusually large. The largest portion of logs, cut upon the west branch of the Penobscot river, came to market last spring; there was, early in the spring, an unusually large freshet, before the logs on the west branch were ready to be driven; but when they were, in fact, driven, the freshet was not higher than it had been for one or two years before; but I think there was, on the whole, a better chance for a "clear drive" last spring than usual, owing to the action of the winds upon the lakes, and the state of the water.

Seventh cross. In high freshets the Penobscot overflows its banks,

and logs are carried in among the trees; in my judgment, large logs are oftener left than the small ones by river drivers.

Eighth cross. River drivers are usually paid by the day and month, but sometimes by the thousand, for driving logs to market.

Ninth cross. I have never seen the permit under which Cummings cut said logs, to my recollection. I never have had an assignment of said permit, as I remember, and cannot state its contents; but I learned from Mr Emerson and Isaac Farrar, that they had half the logs delivered at Veazie's boom for the stumpage.

Tenth cross. All scalers, who go into the woods to scale, scale either by the permit, of which they have a copy, or according to instructions given to them by their employer. Such is my practice and observation.

Eleventh cross. For my answer to the first part of this interrogatory, I refer to my answer to the sixth direct interrogatory. Large logs are more apt to hold out when manufactured than small ones, as to quantity in board measure. It results from the rules of scaling.

Twelfth cross. No; I had no interest in the lumbering operations on township No. 3, range 13, in the winter of 1842–'3.

Thirteenth cross. No; I have no knowledge of the quantity spoken of in my answer to the second direct interrogatory, other than what I derived from the scale bills.

Fourteenth cross. I did, in my answer to the fourth direct interrogatory, undertake to state how much said Howard deducted. The logs I purchased of Cummings and had manufactured, were large logs.

Fifteenth cross. The logs I had of Cummings were marked thus, C | D, called C girdle D.

Sixteenth cross. I do not know any thing of the bearing or materiality of my testimony in this case, nor that the quality of the logs has any thing to do with the points in issue; but if it has I would state, that the trees from which said logs were cut were very good timber, but the logs were not so good as they ought to have been, cut from such trees, in consequence of not having the shaky butts and rotten butts, and very knotty tops cut off, as is usually practised by our most experienced lumbermen.

GEORGE W. PICKERING.

December 21, 1843, subscribed and sworn, before me,

FRED. HOBBS,
Commissioner.

Second answers of Caleb Leavitt, a witness examined on the part of the defendants.

1. I have.

2. I received no instructions from any person, as to the manner of scaling said logs. I received the copies of the permits from Leonard Jones, with directions to go on and scale the logs, and to keep an account of what came off of particular lots, the numbers of which he furnished me, but which I do not now remember.

3. I commenced scaling logs in the winter of 1831–'2, and have been so employed every winter since that time. The first winter on Baskahegan and Schoodic waters; the second winter at same places, and on Maine Schoodic. In 1833–'4, I was scaling on the Nickatur and Passadumkeag waters; in 1834–'5, on the east branch of Pleasant river, and on same as in 1833–'4; in 1835–'6, I scaled but little, and I do not now remember where; in 1836–'7, I believe I was scaling on the head of Union river and the Passadumkeag waters; in 1837–'8, I was scaling on the Passadumkeag and Rickatow; in 1838–'9, on the Union river and Passadumkeag; in 1839–'40, the same; in 1840–'41, I was scaling on the Nawakauta and Black stream, and Roach river, on Kennebec; in 1841–'42, I was wholly on the Nawakauta; in 1842–'43, I was scaling on the Cariboo lake and Black stream; in the winter of 1831–'2, I was employed by Dr. Rose, land agent of Maine, and in all other years by various persons who wanted my services; among them Amos Davis, Isaac Farrar, John Fiske, for Commercial Bank, Thacher and Parker, agents and owners of south half of A, R. 12.

4. I scaled the logs on No. 3, range 13, in the usual manner, and for the purpose of ascertaining accurately their measurement and quality. I did not vary from my usual way of scaling.

5. My scale bill does, in my opinion, shew the quantity actually cut and hauled there at that time. I scaled and numbered every log.

6. I believe it is something over one hundred miles from Bangor to township No. 3, range 13. The logs usually left scattered in the way are the largest logs; because the large logs will lodge on places, gravel beds, &c., that small logs will go over. We generally calculate the largest logs will stop on the way.

Cross examined on the part of the complainant.

1st cross. I was so employed by Leonard Jones, in the winter of 1842–'3, as I before stated, to scale logs on No. 3, range 13. I was there from the fore part of January, most of the time, about two-thirds of the time, to some time in April, the last of April. All that I have received has been paid me by Isaac Farrar. I charged two dollars a day, and expenses paid. Some days I did not scale at all, and then I scaled all day for two or three days.

2d cross. I never had any conversation or written correspondence with either of the defendants, as to the manner in which I should scale said logs, prior or subsequent to my going on to said township for that purpose.

3d cross. I have never received any other compensation than my expenses and two dollars per day, from any person for that service. I never received any thing from any person but Mr. Isaac Farrar, by whom I was at the same time employed to scale for two teams on another township, and I made out my whole bill to him. I don't recollect the amount paid me by Farrar.

4th cross. No, I never had any interest in those or any other logs.

5th cross. Neither Winslow, Jones, or Ordway, ever had any con-

tract with me in reference to scaling said logs, either verbal or written.

6th cross. I never had any contract in writing, or verbal contract, with said Babbs, in reference to scaling said logs, nor with either of said Babbs.

7th cross. I never had any contract with Cummings and his associates, or with Cummings alone, in reference to scaling said logs, either verbal or written.

8th cross. The usual manner of scaling is to take the length and diameter at the top end and ascertain the contents, and make such deduction for rots, and shakes, and crooks, as will make it equal to a straight and sound log. This is my way of scaling, and, so far as I am acquainted with other's scaling, it is the usual manner of scalers.

9th cross. I have seen what was said to be a copy or copies of the permits under which said logs were cut. I think they were signed by no persons but Leonard Jones and the Messrs. Babb. I think Cummings's permit was signed by Leonard Jones, and run to some other person than Cummings, and was assigned to Cummings, but I don't recollect by whom. Aaron and Moses Babb, two Cummings, Douglas and Davis, were operators. I don't know as I can state the contents accurately. They were to cut, haul, drive, and deliver to the boom for one-half, as near as I can recollect the terms. I had copies, I never saw the originals. What I had were said to be copies. I cannot answer more fully or particularly.

10th cross. I was not on the Penobscot river *during*, and cannot speak of my own knowledge. I don't know whether most of the logs cut upon the west branch of Penobscot came to market last spring or not; but having been in the neighborhood of these operations since last spring, and seeing but few logs there, I have reason to believe that they did mostly get down. I do not know, of my own knowledge, that any of them remained behind. All I know of the freshet on Penobscot river last spring is what others have told me.

11th cross. I scaled the logs cut on No. 3, range 13, on the ice of the lake, where they were hauled to be driven to market.

12th cross. I have no recollection that the Babbs ever informed me that there were any logs that they should not run to market at all. I know that there were no logs scaled by me, except on the ice. I scaled none in the woods which the Babbs cut and did not haul.

13th cross. I have no recollection that Cummings, or his associates, informed me that there were any logs cut by them that they should not haul to market. They might have so said, but I have no recollection of it. I scaled none except what they hauled on to the ice.

14th cross. The terms of the permits, of which I had copies, confined the operations to certain lots or sections.

15th cross. I saw no one on the township claiming to act on behalf of the defendants. Mr. Winslow was there once, but I heard him give no directions to any one.

16th cross. I think high freshets on the Penobscot do make large basins of water, and that logs float into them in coming down the river.

I never drove rivers, or was on a drive with river drivers, and cannot say what care is taken of large or small logs in such cases. I have seen large logs left behind which had floated over flats or intervals.

17th cross. I think river drivers are always paid a stated price per day, or month, for driving logs to market.

18th cross. I have not my scale book here present, and cannot state the marks with sufficient accuracy. I have had my mind so full of different marks that I might mistake if I ventured to describe them; but if I recollect right, the Cummings' mark was what was called C girdle D, thus C | D. I cannot recollect the Babbs' mark.

CALEB LEAVITT.

December 5, 1843. Subscribed and sworn before me,
FRED. HOBBS, *Commissioner.*

Answers of Edwin Rose, a witness produced and examined on the part of the defendants.

1. I am thirty-three years old, a land surveyor by occupation, and reside at Thomaston.

2. I was employed to scale logs, cut in the season of 1843, on township No. 3, range 13, west from the monument. I was so employed by Samuel Smith, of Bangor; I scaled said logs between the fourth and twelfth day of May, 1843. I arrived on the township on the fourth, and left on the twelfth. Those that I scaled were scaled in the ordinary manner of scaling on the Penobscot. I measured them with a log rule, first getting the length of a log, and taking the diameter of it at the top end, and then ascertained the contents of it by the rule, making the usual allowance for all defects, and to ascertain the quantity, not the quality, of the timber cut. I scaled seventeen hundred and twenty-seven logs, cut by Cummings, Douglas and Co., making one million sixty-four thousand four hundred and sixty-four feet, board measure; I counted twenty-six hundred and eighty-one logs, cut by Moses and Aaron Babb, and scaled one or two hundred of them, taking about an average lot of the logs; and by these I estimated them to contain one million three hundred and ninety-four thousand one hundred and twenty feet, board measure.

3. I have been employed to scale logs four seasons; I was employed two years by the land agent, to scale for the State of Maine, in the winters of 1834 and '35, 1835 and '36, on the Sebois, and townships No. 8, range 7, No. 6, range 8, No. 8, range 7, again, and No. 7, in 6th range; I was employed in the winter of 1841–'2, by Mr. Mudge, of New York, and D. Cummings, of Portland, and by Clark, and others, of Boston, on township No. 2, range 12, on Penobscot waters, called the Cariboo township. Last winter I was so employed by Mudge on the same No. 2, range 12, and by Samuel Smith, as before stated, on No. 3, range 13.

4. I cannot state the distance, but I should think it was a hundred and fifty miles, by the river, from Bangor to No. 3, range 13. The

larger logs are usually left scattered on the way, in driving logs such a distance.

Cross examination on the part of the complainant.

1st cross. I scaled said logs partly on the ice, and partly in the water of the Cariboo lake, on township No. 3, range 13. The marks on the logs cut by Babbs, and Cummings and Co., were not taken down by me at the time, and I cannot now undertake to state them, or write them out.

2d cross. In scaling said logs I did not act under any contract with either of the defendants, but by the direction of Samuel Smith alone. I have not received any compensation for my services.

3d cross. I have received no compensation, gratuity, or reward, from either of the defendants, or any one else.

4th cross. No person ever gave me any instructions or directions as to scaling, but Smith. He nor any one else has ever paid me.

5th. cross. Scalers do, in scaling logs, deduct from the actual measurement such amount in feet, for "shakes, rots, and other defects," as will, in their judgment, leave the remaining contents of the log sound.

6th cross. I never saw said permits, that I recollect of, and know nothing of them, or their contents.

7th cross. I had no interest in the operation on said township, at any time.

8th cross. I do not know anything further, material, that I can testify to.

EDWIN ROSE.

Subscribed and sworn, January 1, 1844, before me,
FRED. HOBBS, *Commissioner.*

Second answers of Hezekiah Winslow, a witness examined on the part of the defendants.

1. I have given a deposition in this case.

2. Winslow and Ordway, the firm of which I was a member, purchased the logs cut on township No. 3, range 13, in the winter of 1842–'3; that is, the proprietors' half of all that came down the present year, and no more. We paid eleven dollars for the most of them; a part we did not pay so much for. We manufactured all of the (| B×) girdle B cross, that came down belonging to us and the proprietors, and one hundred and fifty-four of the C girdle D's—C | D. The girdle B cross was cut by A. and M. Babb. The other mark was cut by Cummings, Douglas & Co.

We sold thirteen hundred and thirty-one logs, according to the surveyor's account, to George W. Pickering. We sold one-half of them at nine dollars and fifty cents per thousand, and nine-fourteenths of the other half at ten dollars per thousand; the balance of the other half we sold at eleven dollars, and was to be paid in boards at nineteen—twelve

and seven for number twos, threes and fours, and twenty-one dollars for number ones.

The eleven dollars which we paid for the thirty-one fortieths of the proprietors', was in boards of twenty-one, nineteen, twelve, and seven and ten dollars, in money, for the nine-fortieths. Since my first purchase, I have bought, of John W. Veazie, Doggetts' interest of what remained back of those cut last winter, which was nine-fortieths of one-half.

3. The number of logs so manufactured by us, according to the scaler's account, was twenty-five hundred and five. Their measurement, according to the survey by which we purchased, was ten hundred eighty-one thousand two hundred and eighty-seven feet. It is so on my memorandum book, which I think compares with the bills. This quantity (2505 logs) was made up of one hundred and fifty-four of the C | D mark, and twenty-three hundred fifty-one of the | B × mark. I cannot state the quantity of boards, because we sawed them with some other logs, and sawed some of them into shingles; nor can I state the quantity of dimension stuff or shingles. I think we purchased about fifty thousand other logs, in small lots; of all that we sawed, we had surveyed about twelve hundred and twenty thousand, besides the scoots. There were about one hundred and forty-six thousand scoots. I should think we sawed a hundred and fifty thousand of shingles, but it is impossible for me to state the quantity of them. I cannot say how many thousands of shingles it takes to make a thousand feet board measure.

4. We contracted to saw these boards five inches thick, and so sawed them. A majority of the boards are not generally sawed an inch thick. The difference is in proportion to the thickness. They were sawed from a sixteenth to an eighth thicker than the majority of boards usually are that are run to this market.

Cross examined on the part of the complainant.

1st cross. I purchased said logs of William Emerson, Isaac Farrar, Leonard Jones & Co., and John W. Veazie, by his agent, Samuel Smith. I purchased and paid for said logs, and in the manner already stated. I did not purchase or receive any portion of said logs on account of the indebtment of any of the owners to us or myself.

2d cross. M. Coburn, William Howard, and Daniel Davis, scaled the logs at the time we purchased. Mr. Bennock scaled a few of them. I have already stated how many we thus purchased, how many we sold, how many we manufactured. All that we purchased were either sold or manufactured, except those purchased of Veazy, which did not come down this year.

3d cross. We purchased them the forepart of July, about the time the logs came into the Penobscot boom. Most of them were in the boom at that time; they were coming in.

4th cross. The girdle B cross logs were not quite as large, but about the same quality as the C | D's, and most of those we manufactured

were of the | B × mark. We sold a portion of the logs so purchased by us because we had not saws to manufacture them. We sold them to G. W. Pickering.

5th cross. No one of the defendants were interested with us as purchasers, but as sellers merely.

6th cross. The logs so purchased by us were manufactured at Orono by the Mr. Babbs, who were concerned with us in the lumbering operation at Major Hammet's mills, of whom we took a lease of them.

7th cross. I directed the mill-men to saw the logs as prudently as they could. I was at the mills a good deal, and looked after their sawing, and saw that they were manufactured an inch thick. The surveys of which I have spoken, in my answer to 3d direct interrogatory, were those of surveyors in Bangor, by whose survey we sold. I cannot be definite, as to quantities made from these particular logs, for reasons before stated.

8th cross. The logs sawed into shingles were suitable for boards and dimension stuff; but some of them would saw into shingles more prudently than into boards and dimension stuff, because they were hollow-butted.

9th cross. We never had any assignment of said permits; they were given directly to Winslow & Ordway. We had no instructions in regard to the permits; they contained all the stipulations we were under as to the manner of operating on the township. I have not the original here present, but will furnish a copy to be annexed. It is now annexed, marked A.

10th cross. I had no contract with Caleb Leavitt, in regard to scaling logs on No. 3, range 13, during the winter of 1842–'3. I never saw Leavitt, while scaling, till he had half done. I never gave him any direction as to the manner of scaling.

11th cross. I had an interest in the lumbering operations on said township in the winter of 1842–'3. My interest is shown by the permit, a copy of which is annexed, and makes part of my deposition. I had no other interest than therein appears.

12th cross. I have not spoken of the precise quantity of boards which we manufactured from the logs cut on this township, for reasons before stated; nor of dimension stuff, nor shingles. What I have said relates to the quantity manufactured by us from these and other logs. In speaking of quantities of boards, dimension stuff and shingles, I had reference to the survey by which we sold, and which I relied upon as correct; and so in regard to the measurement of logs also. I derived my knowledge from the scale and survey bills made by sworn surveyors. I was not personally present at the scaling or surveying of said logs; but was at the surveying of a majority of the boards. The survey of the logs to us was not exact; they made more boards than they were scaled to us for. This I ascertained, not from personal observation of scaler, but from sawing the logs, and comparing the scale of the logs by which I purchased with the survey of the boards by which I sold.

13th cross. The marks of the logs which we purchased were as follows : | B, called girdle B ×, and C | D, called C girdle D.

14th cross. I do not now remember, or think, of any thing that I can state, further than I have already done.

HEZEKIAH WINSLOW.

December 28, 1843. Subscribed and sworn, before me,
FRED. HOBBS, *Commissioner.*

[Paper A, annexed to this deposition, is the same as paper C, annexed to the deposition of H. Winslow.]

UNITED STATES OF AMERICA,
Maine district, first circuit, ss:

The Circuit Court of the United States, begun and holden at Portland, in and for the Maine district, on *on* the first day of May, [L. S.] in the year of our Lord one thousand eight hundred and forty-three—

To George T. Curtis and William W. Story, of Boston, in Massachusetts district, esquires, or to either of them, respectively:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Nathan T. Dow and Luther Bell, witnesses to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, against William Emerson and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, of Portland, this ninth day of June, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

The execution of this commission appears by the schedule annexed.

GEO. T. CURTIS, }
W. W. STORY, } *Commissioners.*

Defendants' interrogatories to Nathan T. Dow and Luther V. Bell, witness examined on the part of the defendants.

1. What is your place of residence and occupation?

2. Do you know John Williams, formerly of Dover, N. H.? Where is he now; how long has he been there; and what is the cause of his being there?

Interrogatory to Mr. Dow. How long have you known him? When did you first see him, after his return from New York, last summer? What change did you then observe in him? Please state what business transactions you had with him afterwards, and when; and particularly whether or no, in those transactions, he was confused and forgetful, or betrayed a want of memory, or an impaired mind and recollection. Please state fully any and all facts and circumstances tending to elucidate the state and condition of his mind and memory, at the respective periods stated.

Interrogatory to Mr. Bell. What was the condition of his mind and memory at the time when he first came to your institution? How now, in comparison, and the causes, or apparent cause or causes of his present condition? What, in your judgment and opinion, is the cause?

J. P. ROGERS,
For Defendants.

Received and filed, June 8, 1843.

Answers of Nathan T. Dow, a witness examined on the part of the defendants.

To the first interrogatory he saith: I reside in Boston, where I am in the practice of the law.

To the second interrogatory he saith: I do know him; the last time I saw him was on the ninth of April last. He was then in the McLean Asylum, at Somerville, in this State, as a patient. I cannot, of my own knowledge, say how long he had been there. He was not there as long ago as December 16th last, when he was in my office in Boston, on business.

To the third interrogatory he saith: There has been no man an inhabitant of Dover, N. H., (where we resided together from my infancy till manhood, with the exception of occasional absences,) other than a member of my father's family, of whom I have had a better personal knowledge than of him. I have not resided at Dover for the last ten years; I believe Mr. Williams has not for the last four or five. I have, however, during the last ten years, often seen and conversed with him, both there and elsewhere. I first saw him, after he had taken up his residence in Boston, some time in September last. It might have been in the month next before or after, but I think it was September. I then saw him at his house; spent a part of the evening with him there. I then noticed a marked change in him. He had not his former very ready apprehension, nor clearness and pith of remark. His utterance seemed labored and embarrassed. I noticed these particulars at the time, and was struck by them. He did not, in these respects, fall below the common standard, but much below his own. I remarked this substantially to some of my friends, on a visit to Dover a few weeks afterwards. I saw him occasionally at his house, at my office, and elsewhere, from that time till the last of December following, and always noticed the

same peculiarities. He always, at these times, appeared, as one would say in common phrase, "broken up," or like a "broken down man." I entertained conjectures as to the cause; my inquiries changed these. Nothing occurred, however, to change my impression as to his actual personal condition, compared with my former knowledge of him. In the early part of December last, (I learn from my day-book that it was before the 10th,) he called on me at my office, to confer with me, professionally. It had reference to proceedings in bankruptcy, pending in the United States district court, for the southern district of New York, upon his petition for the benefit of the bankrupt act, filed some few months previous. I had previously known him, as having had frequent occasion for the services of different members of the profession, in various important causes. I had had some personal knowledge of his style of intercourse with those of it called to his aid; that he was ready, apt, pertinent, and appreciating. At this interview, he spent two hours, perhaps, which were devoted wholly to the matter then in question, involving complicated dealings in his general business, and bearing upon the subject of his pending discharge in bankruptcy. I do not now remember anything in his opening to me of the matter submitted, calculated to excite attention to the state of his mind. His appearance was consistent with my then recent impressions of him. I had several subsequent interviews with him on the same subject, at my office, all within ten days of the first. In none of them did he appear so well as at the first. He certainly exhibited less acuteness, discrimination, and memory, than I felt sure he possessed in his best days. I was oftentimes misled by statements, which a more extended inquiry proved to be inaccurate. When these applied to transactions of five or ten years standing, they of course excited no surprise; and I well remember so saying to him, when he apologized, as he often did, with his usual politeness. But they were not limited to old transactions. He would often misrecollect statements made at prior interviews; and once, in particular, I was very much struck with his entire forgetfulness of having shown to me a few days previous, and even of his *ever possessing*, a complete copy of the schedule of his assets and liabilities, filed in his case in bankruptcy, and which we had diligently examined together not more than a week previous; and this, too, with reference to the leading points of discussion between us. It was with much difficulty that I could convince him of his error, and that we had so short time previous examined the documents together as above stated.

Upon a careful detail of circumstances, the whole matter flashed upon his mind like the awakened memory of things long forgotten. He left my office to get it, and soon returned with it. This incident is detailed for no other purpose than to show to what *extent* it affected *me*, which was, that his mind was weak, and not at all times to be depended on. It is impossible to detail to another all the circumstances affecting my judgment at the time, so as to subject the correctness of it to proper criticism. The view which I took of this and other incidents of our interview at that time, I very soon after stated to a Mr. Gordon, his confi-

dential clerk, and told him in substance that I considered his mind broken, and that he was in nothing the man I once knew him to be. I do not remember that he was at my office after the 16th December. I am pretty confident he was not. I judge of the time by an entry in my day-book. As the business between us was not then completed, I expected him again, but he did not come. In about one week I was sent for to see him on the same business at his house, where he was then sick. I called then, and three or four times afterwards, within a week or ten days. At every visit I made at his house he exhibited decided signs of mental alienation, as obvious to his family, from their remarks, as to me. Circumstances made it important to resume the topics of our former interviews at my office, for the purpose of concluding the matter upon which my aid was sought in the outset. Several conferences were had. The character of them very much discouraged my hopes of bringing the matter to a successful issue. I was often obliged, on account of the state of his mind, to break off abruptly, and never fully succeeded to the extent of my wishes. As I consider him at this time, viz., during my visits to him at his house, to have been in a decided state of mental aberration, I cannot properly speak more of him, unless I add a word as to his memory at these times. It was not good. He did not confide in it himself, but always appealed to those about him. If it served him faithfully as to matters of some years standing, as it sometimes would, it was noticed and spoken of by myself and others in his presence with joyful surprise.

N. T. DOW.

UNITED STATES OF AMERICA, *district of Massachusetts, ss:*

On this twenty-sixth day of September, in the year eighteen hundred and forty-three, the aforesaid Nathan T. Dow personally appeared before me, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which this deposition was taken, gave the foregoing deposition, by him subscribed in my presence, and the same was by me reduced to writing in his presence.

Taken under the foregoing commission.

Given under my hand and seal, on the day and year above noted.

W. W. STORY,
Commissioner of the circuit and district courts of the United States, for Massachusetts district.

Answers of Luther V. Bell, a witness examined on the part of the defendants.

To the first interrogatory he saith: I am a physician and superintendant of the McLean asylum for the insane, at Somerville, near Boston.

To the second interrogatory he saith: I did know him; he is now deceased. He died on the seventeenth of July last, at the hospital.

To the third interrogatory he saith: The said Williams became a patient at said asylum on the twelfth of January, 1843. At the time of

his arrival, his mind was exceedingly imbecile, his judgment as to his own state and capacity entirely erroneous, and his memory in a state of considerable activity, but of limited correctness as to matters past, but more to be relied upon as to matters remote than as to more recent transactions; but in my judgment not to be depended on, as to accuracy, in regard to any events except as far as corroborated by other testimony. The cause of his disease was undoubtedly an affection of the brain; apoplexy had preceded as was alleged, and the condition of his symptoms, and their progress, left no doubt on my mind that this had been the case. He, soon after his admission, experienced frequent attacks of paralysis of one side of his body, and on the fifteenth of July had an apopletic fit, which terminated his life on the seventeenth. His mental powers were in a constant and gradual state of declension from the date of his admission to the final paroxysm.

LUTHER V. BELL.

UNITED STATES OF AMERICA, *district of Massachusetts, ss:*

On this twenty-seventh day of September, in the year eighteen hundred and forty-three, the aforesaid Luther V. Bell personally appeared before me, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the *relating to the* cause for which this deposition was taken, gave the foregoing deposition, by him subscribed in my presence, and the same was by me reduced to writing in his presence.

Taken under the foregoing commission.

Given under my hand and seal, on the day and year above noted.

GEO. T. CURTIS,
Commissioner of the circuit and district courts of the United States, for Massachusetts district.

Bangor, May 19, 1835.

JOHN WILLIAMS, ESQ.,

Dear sir:—I will, and do hereby, give you the refusal of, and right to take, three undivided fourth parts of township number three, of the thirteenth range of townships west from the east line of the State of Maine, at any time on or before the eighth day of June next, at six dollars and a half per acre; payments—one third cash, the residue in one and two years equal payments, with interest annually, reserving one quarter part of said township for Isaac Farrar, Cyrus Goss, and myself.

Respectfully, yours, &c.,

(Signed,) WILLIAM EMERSON.

MAINE DISTRICT, *ss:*

Circuit court, April 1, 1844.

The following commission, and depositions accompanying same, were received on the sixteenth day of March last, and were this day, on motion of J. S. Rowe, esquire, opened and filed.

Attest: J. MUSSEY, *Clerk.*

UNITED STATES OF AMERICA, *Maine district, ss:*

First circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and forty-three, to Thomas E. Sawyer, of Dover, in the district of New Hampshire, esquire:

[L. S.]

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Moses Paul and Joseph Hanson, witnesses to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity against William Emerson and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this ninth day of June, in the year of our Lord one thousand eight hundred and forty-three.

J. MUSSEY, *Clerk.*

Defendants' interrogatories to Moses Paul and Joseph Hanson, witnesses examined on the part of the defendants.

1. What is your age, occupation, and place of residence?

2. Are you acquainted with John Williams, formerly of Dover; when did you last see him, and where is he at this time; how long have you known him?

3. [What was the state and condition of said Williams's mind at the last periods you saw him?] State fully any and all facts or conversations with said Williams, within your knowledge, which has a tendency to disclose the state of his intellect.

J. P. ROGERS,
For defendants.

The portion of the third interrogatory included in brackets is objected to by the complainant.

Received and filed, June 8, 1843.

Answers of Moses Paul, a witness examined on the part of the defendants.

Answer to first interrogatory. I am forty-six years of age; am agent of the Cocheco Manufacturing Co., and reside at Dover, New Hampshire.

Answer to second. I was acquainted with John Williams, who formerly resided in said Dover. He died on the seventeenth day of July last at the McLean Asylum (insane hospital) in Charlestown, Massachusetts, or about that time. I saw said Williams for the last time in the month of December, 1842. I have known him from my childhood.

Answer third. His mind was much broken down and shattered, and his memory or recollection nearly gone. I had several conversations with him, and he would attempt to converse on any subject, and, after a few words, he would break off, perhaps in the middle of a sentence, and talk on some other; and so on from subject to subject without any connection.

MOSES PAUL.

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

SEPTEMBER 30, 1843.

Subscribed and sworn to, before me,
THOMAS E. SAWYER, *Justice Peace.*

Answers of Joseph Hanson, a witness examined on the part of the defendants.

Answer to first interrogatory. I am sixty years of age, my occupation a trader, and now reside in Boston, Massachusetts.

Answer to second. I was intimately acquainted with John Williams for over thirty years previous to his death. He moved from New York to Boston some time in August, 1842, after which I saw him several times; the last time was while he was at the insane hospital in Charlestown, Massachusetts; the precise time I cannot state. He died at said hospital in July last.

Answer third. After he came from New York, as above stated, he appeared very different from what he had always before during our acquaintance. The last time I saw him, which was at the hospital, his talk was disconnected, incoherent, and irrational. At that time, and also at other times, when I attempted to converse with him, his recollection or memory appeared to be very much impaired.

JOSEPH HANSON.

STATE OF NEW HAMPSHIRE, *Strafford county, ss:*

MARCH 4, 1844.

Subscribed and sworn to by said Joseph Hanson, before me,
THOMAS E. SAWYER,
Justice of the Peace.

And at May term, A. D. eighteen hundred and forty-four, it is ordered by the court, that the plaintiff have leave to file a supplemental bill on

or before the first Monday of June next; the answers thereto to be filed on or before the first Monday of July next, and the replication to be filed at the same time. The parties to proceed to take testimony, and the same to be closed, and publication to be made on or before the fifteenth day of September next.

And on the twenty-fourth day of the same May, the plaintiff files his supplemental bill in the words following, viz:

To the honorable justices of the circuit court of the United States, for the first circuit, within and for the district of Maine.

John Doggett, of Boston, in the Commonwealth of Massachusetts, and a citizen of said commonwealth, brings this his supplemental bill against William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, all of Bangor, in the State of Maine, and citizens of said State. And thereupon the said Doggett complains and says: That, on or about the first day of October, A. D. eighteen hundred and forty-one, the complainant exhibited his original bill in this court against the said defendants, which said bill, after stating that the said defendants had before that time purchased of the State of Maine a township of land in said State, numbered three, in the thirteenth range of townships, west from the east line of the State, and that said defendants, Roberts, Farrar, Norcross, and Mason, appointed said Emerson their agent for the sale of said township, further alleged that said Emerson, afterwards, in the month of May, eighteen hundred and thirty-five, gave to one John Williams a certain bond or obligation, or power of attorney, whereby said Emerson bound himself and his associates to procure a conveyance of said land to be made to said Williams for the sum of six dollars and fifty cents per acre. And that the object of said obligation was to enable said Williams to make sale of said township on account of said defendants. And said bill further, among other things, averred, that said Emerson as such agent, at the time of executing said obligation, delivered to said Williams, for the purpose of enabling him to sell said land, certain certificates, setting forth the quantity and quality of pine timber upon said township, which said certificates were false, and greatly overstated the said amount and quality; and that the same were afterwards exhibited by said Williams to this complainant, and that said Williams represented the same to be substantially true, by means of which this complainant was induced to and did agree to purchase one eighth part of said township at the price of six dollars and fifty cents per acre, which this complainant subsequently paid to the defendants, who, thereupon, procured for this complainant a deed of the same.

And said original bill, among other things, further set forth, that said township contained, exclusive of water and public lots, only nineteen thousand eight hundred and twenty-five acres, and was so purchased of the State by these defendants, but that said defendants fraudulently concealed that fact from the complainant, and thereby induced the complainant to purchase and pay for one eighth part of twenty-two thousand and forty acres, being more land than said township actually contained; so that, in fact, either through fraud or mistake, this complainant had

actually purchased and paid for one-eighth of said township, as a full township, and of great value for the timber thereon, when in fact it was not a full township, and was of little or no value for its timber, or for any other purpose. And that said defendants had refused to restore the complainant to his original position, or to make him any remuneration therefor. And said bill further set forth divers other matters and things as substantive matters of complaint, and thereupon prayed that said defendants might severally make answer thereunto, and to divers interrogatories specifically propounded therein. And that, upon a full and fair disclosure of the several matters aforesaid, the said purchase by this complainant might be declared null, the said defendants compelled to refund to the complainant all moneys by them, or either of them, received as aforesaid, and that the parties might be restored to their respective positions before said contract was entered into; and for such further relief as his case might require; this complainant offering to perform all acts necessary for him to perform in the premises. To which said bill the said defendants filed their several answers in the due course of equity proceedings; and the complainant filed the general replication to said answers. And thereupon the said cause was at issue, and testimony therein was duly taken on both sides. All which will appear by the bill, answers, and other proceedings now upon the records of this honorable court. And now, the said John Dogget, by way of supplement to his said original bill, leave of this court having been first granted therefor, further sheweth, that the original paper, obligation, or refusal, given by the said Emerson to the said Williams for the conveyance of three-fourths of said township of land, referred to in the original bill, at six dollars and fifty cents per acre, was by the said Williams exhibited to this complainant at the time of and pending the negotiation between said Williams and this complainant for the purchase of a part of said township. And the said Williams, at the time when said paper was so exhibited to this complainant in order to induce this complainant to become a purchaser of a part of said township, expressly stated to this complainant that he, said Williams, was desirous of purchasing, and intended to purchase, a part of said township, under and according to the terms of said obligation, designedly giving this complainant to understand that said township of land was a full township, containing, exclusive of reservations, twenty-two thousand and forty acres, and that the sum of six dollars and fifty cents per acre was the true price for which said township could be obtained; and that the same could not be purchased of said Emerson for a less price than six dollars and fifty cents per acre. And that he, said Williams, was desirous of purchasing, and would purchase, a part of said township at that price; and that the whole sum of six dollars and fifty cents per acre was to be paid to the owners of said township. And this complainant avers, that the whole negotiation between said Williams and this complainant, was predicated, and proceeded upon no other idea than that the said obligation contained the truth as to the price per acre for which said township could be purchased of the owners, and concealed no fact material in said negotiation to the

purchaser. And your complainant further avers, that, after examining said obligation, he had reason to believe, and did believe, that the owners of said township of land would not sell any part thereof for a less sum than six dollars and fifty cents per acre, and that the entire sum of six dollars and fifty cents per acre, for three-fourths of twenty-two thousand forty acres, was to be paid to the owners thereof.

And he further believed, that said Williams would also purchase a portion of said land at six dollars and fifty cents per acre. And, inasmuch as this complainant supposed and believed that said Emerson was well acquainted with the value of timber lands in Maine, this complainant was induced by the terms of said obligation to believe, and did believe, that said land was well worth the aforesaid sum of six dollars and fifty cents per acre. And your complainant further avers, that in making the purchase of one-eighth of said township as stated in the original bill, he not only confided in the certificates referred to in said bill, and the representations of said Williams and said Emerson in relation thereto, but he also fully relied upon said written obligation of said Emerson, and the statements of said Williams in relation thereto, and the natural inferences to be deduced therefrom. And your complainant further in fact avers, that the sum of six dollars and fifty cents per acre was not the price for which said Emerson agreed to sell said three-fourths of said township; but, on the contrary, the agreement between said Emerson and said Williams was, at the time said written obligation was given, that the same three-fourths of said township would be sold for the sum of ninety thousand dollars, which is a much less sum than six dollars and fifty cents per acre, and all which was well known to said Emerson at the time he gave said written obligation to said Williams.

And your complainant expressly charges that, by means of said false and fraudulent written refusal thus given by said Emerson to said Williams, the said Emerson, agent of the owners as in the original bill is set forth, did, through the instrumentality of said Williams, commit a gross fraud upon the complainant, or knowingly enable the said Williams so to do, as the facts stated herein, and in the original bill, fully shew. And this complainant further avers, that at the time when said Emerson gave the said written obligation to said Williams, the same being of a false and fraudulent character, and well known by the said Emerson so to be, he the said Emerson also well knew, or had good reason to believe or mistrust, that the object of said Williams in obtaining the same, thus setting forth a price per acre for said land greater than said Emerson had in fact agreed to sell the same for, was, and could be none other, than that by means thereof the said Williams might be enabled to dispose of said land to others, at a price exceeding that for which said Emerson had so agreed to sell the same, by concealing the true price, and inducing such other persons to believe that said Emerson would not sell said three-fourths of said township for a less sum than six dollars and fifty cents per acre. And so the complainant charges, that said Emerson thus knowingly and wilfully placed it in the power of said Williams to deceive and defraud other persons

who might be disposed to purchase said land, or a portion thereof, in said purchase, and did deceive and defraud this complainant through the instrumentality of said Williams, as is herein, and in said original bill, fully set forth.

And this complainant further avers, that, in pursuance of the design of said Williams in obtaining said written obligation, he did affect to become a purchaser of a portion of said township, to wit, of one-eighth part thereof. And the said Williams and this complainant, and other persons who purchased other portions of said township at the same time, received deeds of the several portions of said township so purchased by them. And this complainant and said other persons placed their notes given in payment, made payable to said Emerson, or his order, in the hands of said Williams, who delivered the same to said Emerson, together with his own notes for a small sum, being the difference between the sum of ninety thousand dollars and the amount of notes and drafts given by said other purchasers and this complainant, this complainant being ignorant of the exact amount of the notes so given by said Williams, and supposing at the time that said Williams paid the full sum of six dollars and fifty cents per acre for one-eighth of said township. And the whole amount of notes so given were, by said Emerson, divided and apportioned with the other defendants, though in what precise manner this complainant is unable to set forth. To the end, therefore, that the said defendants may answer the matters and things hereinbefore set forth by way of supplement, and that your complainant may have such and the same relief against the said defendants as is prayed for by the original bill, this complainant prays that the said defendants may be held to answer the premises, and that such other and further proceedings may be had as the nature of this case may require, and to equity may appertain.

By T. P. CHANDLER &
W. P. FESSENDEN,
His Solicitors.

And on the twenty-sixth day of June then next, the answers of the defendants thereto are filed as follows, viz:

The several answer of William Emerson to the complainant's supplemental bill of complaint.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereto, he answers and says: that, whether this defendant's obligation to the said Williams for the conveyance of three-fourths of said township, at six dollars and fifty cents per acre, was by the said Williams exhibited to this complainant, at the time of and pending the negotiation between the said Williams and this complainant, for the purchase of a part of said township, this defendant has no knowledge or means of belief.

And this defendant further answering says, that he has no knowledge in respect to said paper having been exhibited to this complainant, or to any inducements said Williams had to exhibit said paper, if any such paper was exhibited; or what declarations were made by said Williams to this complainant. Said Williams did purchase a part of said township, but not according to the terms of said obligation.

And this defendant further answering says, that if said Williams did give this complainant to understand that said township of land was a full township containing, exclusive of reservations, twenty-two thousand and forty acres, said representation was true in point of fact; that said township was a township six miles square, which contains that number of acres; and, although the State sold to these defendants said township, deducting the number of acres covered by water, these defendants, not the said Williams, would have been guilty of a fraud in reselling the same as and for a full township, without deduction, had they so sold it.

And this defendant further answering says, that it is the usual custom in that section of the country to sell townships without reservation, and that the reason why this was not sold so by the State was because the State had surveyed it into sections, with a view to sell it in fractional parts, by sections, as surveyed; and that there was no fraud or misrepresentation, and could have been none, in the sale of this tract as a township, in representing it as being a full township, and as containing twenty-two thousand and forty acres.

And this defendant further answering says, that he has no knowledge, or means of knowledge, or belief, what representations said Williams made to this complainant, as to what price per acre said township could be obtained for, or what said Williams said in respect to purchasing the same, or what he said in respect to the sum which was to be paid to these defendants.

And this defendant further answering says, that he has no knowledge what induced this complainant to make the said purchase, nor what paper, certificate, or obligation, if any, was exhibited to this complainant by the said Williams, nor what this complainant had reason to believe, or did believe, in respect to the owners of said township, or what sum was to be paid them therefor, nor at what price said Williams was to become a purchaser.

And this defendant further answering says, that he had no previous acquaintance with this complainant, and has no knowledge that this complainant had any previous acquaintance with him, except what might have grown out of a purchase of a carpet for the Unitarian church in Bangor some years since; whether this complainant supposed and believed that this defendant was well acquainted with the value of timber lands in Maine, he cannot say. But this defendant says, that this complainant made no inquiry of him as to the value of this or any other timber land in Maine; and this defendant has no knowledge in respect to the belief of this complainant as to the value of this township.

And this defendant further answering says, that he has no knowledge in respect to what this complainant confided in, or what induced him to

make his said purchase; but this defendant absolutely denies that he was instrumental in obtaining any certificate, or that he knew that any certificate had been exhibited to this complainant, or that this defendant had made any representations whatsoever to this complainant in respect to the value of said township, or that the said Williams had made any representations thereto. And this defendant has no knowledge or belief that this defendant's obligations with said Williams in any manner deceived this complainant, or operated as an inducement for him to enter into said contract.

And this defendant further answering admits, as in his former answer he has stated, that the sum of six dollars and fifty cents per acre was not the price for which this defendant agreed to sell three-fourths of said township to said Williams, and that the price was the price mentioned in this complainant's supplemental bill.

And this defendant further answering says, that when he signed said obligation to said Williams to convey said three quarters of said township at six dollars and fifty cents per acre, he had in his own mind the idea of the deductions made by the State, and had he thought, or supposed, that the said Williams would have used the same for any such purposes as in the said complainant's supplemental bill is alleged, he would not have given the same. And this defendant denies that through the instrumentality of the said Williams he intended to commit, or did commit, any fraud whatsoever upon this complainant. And this defendant further answering says, of the said obligation of the said Williams, though not expressing the true intent and meaning of the parties, that it was not fraudulent, or known, or intended, to be so by this defendant, and that the same was not given with any such purpose or intent, or with the expectation or belief that the same would be thus used; and this defendant did not know, neither did he suspect or believe, that the said Williams, in obtaining the said obligation, intended or designed to avail himself thereof for any such purpose as is alleged, or might thereby be enabled to dispose of said land at any price, or thereby to conceal the price which he was to pay therefor, or thereby to induce any person to believe that he was not to pay therefor the price stipulated for in said obligation. And this defendant denies that he did give to said Williams said obligation with any knowledge or intention that he was thereby placing it in the power of said Williams, or that he knew or believed that the said Williams would use the same in any manner to deceive or defraud any person who might be disposed to purchase any portion of said land. And this defendant further answering says, that said Williams did not only affect to become, but did actually become, a purchaser of one-eighth of said township, and did pay therefor to this defendant, as aforesaid, independently of the money and notes of this complainant and his co-purchasers, the sum of two thousand seven hundred and ninety-two dollars and fifty cents; which sum, and the interest on the price paid for the said three quarters from the day of the date of said refusal, he paid, at that time, in money and his two promissory notes, for one thousand dollars each; and said Goss

paid four thousand dollars in sixty days paper, and gave his two several promissory notes for four thousand dollars each; which last two notes of said Goss, and said Williams' notes, were secured by mortgages of their respective interests in said township. And this defendant further answering says, that he has no knowledge to whom this complainant gave said promissory notes for said purchase, but that he received this complainant's notes, as stated in his original answer, from the said Williams, in part payment of the said Williams's payment for said township. And this defendant further answering says, that he received from the said Williams the sum of ninety thousand dollars for three quarters of said township; that he had no interest in said three-fourths, and that the amount paid to him by said Williams was by him accounted for to Amos M. Roberts, Isaac Farrar, and Norcross and Mason, who were the owners of said three-fourths, by him sold; and although he did subsequently give his notes to Messrs Le Bretton and Moody for one-sixth of said ninety thousand dollars, it was in consequence of the said Norcross and Mason's having transferred to them one moiety of their interest. And this defendant further answering says, that he has no knowledge of any representations having been made by the said Williams to this complainant in relation to any of the matters inquired of in this complainant's supplemental bill of complaint.

WILLIAM EMERSON.

MAINE DISTRICT, *ss:*

June 18, 1844.

Then the above named William Emerson personally appeared and made oath that the foregoing answer by him subscribed, and the matters therein alleged, are true according to his best knowledge and belief, before me,

JAS. S. ROWE,
Commissioner of circuit court of U. States.

The several answer of Amos M. Roberts to the complainant's supplemental bill of complaint.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereto, he answers and says, that he has no knowledge of, or any information which would authorize him to express a belief of what the said Williams said, or did, or represented to this complainant, in relation to said township; or whether or not this complainant had any such representations made to him by the said Williams, as he, in his supplemental bill, has alleged; nor what considerations induced this complainant to make said purchase; that this defendant had no knowledge that said Williams had any obligation from the said Emerson to convey to him any portion of said township, or that this complainant had purchased, or was in negotiation with the said Williams for a purchase of, any portion of said

township, until after this complainant's purchase had been consummated. And this defendant further answering says, that he is wholly ignorant of all the matters and things in this complainant's supplemental bill set forth, as respects all the actings and doings and conduct of the said Williams; and of the motives, promptings, and considerations of this complainant in the matter of said Williams's said negotiation and sale, and of this complainant's said purchase, prior to the sale thereof to him. Neither has he any knowledge or information which would authorize him, in his judgment, to express a belief in relation thereto. He was the owner of one-fourth of said township, which he purchased for the purpose and in the expectation of making a profit upon the resale of it; that the matter of the sale was committed to the said Emerson, as he has in his answer to this complainant's original bill alleged; that he has personally made no representations in respect to it to the said Williams, or to this complainant. That prior to this complainant's purchase he was ignorant of all the circumstances connected with said purchase, and if any fraud, misrepresentation, or misapprehension was made or entertained by any one in respect to said township, prior to this complainant's purchase, it was unknown to, and unparticipated in, by this defendant. And this defendant further answering says, that townships which are six miles square, when sold as townships, are computed to contain, and are sold as containing, with the usual reservations, twenty-two thousand and forty acres. That if said Williams did represent to this complainant that said township was a full township, and contained that number of acres, of which this defendant has no knowledge or belief, such representation was true in point of fact; and that this defendant and the said Williams would have been justified in so representing said township, and he knows of no reason why said township should not have been so sold. In the purchase of said township from the State, there was a deduction made to this defendant, and the other purchasers, for the land covered by water, for the reason, as this defendant understands and believes, because the State of Maine had caused said township to be surveyed into lots, and because this said purchase embraced an aggregation of lots; but this defendant does not understand, nor consider, that, because he thus purchased, he was under any obligation thus to sell.

And this defendant further answering says, that in respect to the said Emerson having given to the said Williams an obligation to convey any portion of said township for six dollars and fifty cents per acre, or for any sum per acre, or for any sum except a hundred and twenty thousand dollars for said township, or at that rate for any portion of it, he had no knowledge or suspicion until the said Emerson so stated to our counsel, and to us when our counsel were preparing said Emerson's answer to this complainant's original bill. On the contrary, this defendant supposed and believed, that said Emerson's obligation to said Williams was for the conveyance of three-fourths of said township for the sum of ninety thousand dollars.

And this defendant further answering says, that the said Williams

became a purchaser of one-eighth of said township, and that he paid therefor, independently of the money and notes of this complainant and his co-purchasers, the sum of two thousand and seven hundred and ninety-two dollars and fifty cents, which sum, together with the interest on the ninety thousand dollars, from the date of said refusal, he paid at that time in money, and by his two several promissory notes for one thousand dollars each; and the said Goss paid four thousand dollars in money or short paper, and gave his two several promissory notes for four thousand dollars each; which said notes were secured by mortgage upon their interests in said township.

And this defendant further answering says, that at the time of the purchase of said township of the State of the land agent, he objected to making any deduction in consequence of lands covered with water; that after considerable conversation, in which we represented to him that the State had surveyed the same into lots, and that by the return of said survey said township was represented to contain this number of acres, we thought he ought to convey the whole township for the number of acres which the surveyor had returned said township to contain; and after some considerable conversation he consented, and did convey the township as aforesaid.

A. M. ROBERTS.

MAINE DISTRICT, *ss:* *June* 19, 1844.

Then the above named Amos M. Roberts personally appeared and made oath that the foregoing answer, by him subscribed, and the matters therein alleged, are true, according to his best knowledge and belief. Before me—

JAS. S. ROWE,
Commissioner of C. C. United States.

The several answer of Isaac Farrar to the complainant's supplemental bill of complaint.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereunto, he answers and says, that he has no knowledge of, or any information which would authorize him to express a belief of what the said Williams said, or did, or represented to this complainant in relation to said township; or whether or not this complainant had any such representations made to him by the said Williams, as he, in his supplemental bill, has alleged; nor what considerations induced this complainant to make said purchase.

And this defendant further answering says, that after the said obligation had been given by the said Emerson to the said Williams, and before this complainant had made his said purchase, this defendant had

been informed by the said Emerson, that he had sold three-quarters of said township to said Williams, or had agreed to sell the same to him, upon certain conditions; but whether said agreement or obligation was in writing or by parol, he was not informed, though he supposed the former. That he did not suppose or believe, nor was he informed, that the agreement or obligation of the said Emerson contained any stipulation whatsoever that the said Williams was to have said township for any price by the acre, but for the gross sum of ninety thousand dollars for three-fourths of said township; and he was so informed by the said Emerson, when the aforesaid facts were communicated to him as above stated, and upon that basis he and the other owners of said township adjusted their claims against the said Emerson.

And this defendant further answering says, that he is wholly ignorant of all the matters and things in this complainant's supplemental bill set forth, as respects all the actings, and doings, and conduct of the said Williams, and of the motives, promptings, and considerations of this complainant in the matter of said Williams's said negotiation and sales, and of this complainant's said purchase prior to the sale thereof to him; neither has he any knowledge or information which would authorize him, in his judgment, to express a belief in relation thereto. He was the owner of one-fourth of said township, which he purchased for the purpose, and in the expectation, of making a profit upon the resale of it; that the matter of the sale was committed to the said Emerson, as he has in his answer to this complainant's original bill alleged; that he has, personally, made no representations in respect to it to the said Williams, or to this complainant; that prior to this complainant's purchase he was ignorant of all the circumstances connected with said purchase; and if any fraud, misrepresentation, or misapprehension was made or entertained by any one in respect to said township, prior to this complainant's purchase, it was unknown to, and unparticipated in, by this defendant.

And this defendant further answering says, that townships, which are six miles square, when sold as townships, are computed to contain, and are sold as containing, with the usual reservations, twenty-two thousand and forty acres; that if said Williams did represent to this complainant that said township was a full township, and contained that number of acres, of which this defendant has no knowledge or belief, such representation was true in point of fact, and that this defendant and the said Williams would have been justified in so representing said township, and he knows of no reason why said township should not have been so sold. In the purchase of said township from the State there was a deduction made to this defendant and the other purchasers for the land covered by water, for the reason, as this defendant understands and believes, because the State of Maine had caused said township to be surveyed into lots, and because his said purchase embraced an aggregation of lots; but this defendant does not understand, nor consider, that because he thus purchased he was under any obligation thus to sell.

And this defendant further answering says, that at the time of the

purchase of said township of the State of the land agent, he objected to making any deduction in consequence of lands covered by water; that after considerable conversation, in which we represented to him that the State had surveyed the same into lots, and that, by the return of said survey, said township was represented to contain this number of acres, we thought he ought to convey the whole township for the number of acres which the surveyor had returned said township to contain; and after some considerable conversation he consented, and did convey the township as aforesaid.

And this defendant further answering says, that in respect to the said Emerson's having given to the said Williams an obligation to convey any portion of said township for six dollars and fifty cents per acre, or for any sum per acre, or for any sum except a hundred and twenty thousand dollars for said township, or at that rate for any portion of it, he had no knowledge or suspicion, until the said Emerson so stated to our counsel and to us, when our counsel were preparing said Emerson's answer to this complainant's original bill; on the contrary, this defendant supposed and believed, that said Emerson's obligation to said Williams was for the conveyance of three-fourths of said township for the sum of ninety thousand dollars.

And this defendant further answering says, that the said Williams became a purchaser of one-eighth of said township, and that he paid therefor, independently of the money and notes of this complainant and his co-purchasers, the sum of two thousand seven hundred and ninety-two dollars and fifty cents, which sum, and the interest on the ninety thousand dollars from the date of said refusal, he paid at that time, in money, and by his two several promissory notes for one thousand dollars each. And the said Goss paid four thousand dollars in money or short paper, and gave his two several promissory notes for four thousand dollars each, which said notes were secured by mortgages upon their respective interests in said township.

ISAAC FARRAR.

MAINE DISTRICT, *ss:*

June 19, 1844. Then the above named Isaac Farrar personally appeared and made oath that the foregoing answer by him subscribed, and the matters therein alleged, are true, according to his best knowledge and belief, before me,

JAS. S. ROWE, *Commissioner of C. C. of United States.*

The several answer of Nicholas G. Norcross to the complainant's supplemental bill of complaint.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer thereto, he answers and says, that he has no knowledge of, or any infor-

mation which would authorize him to express a belief of what the said Williams said, or did, or represented to this complainant, in relation to said township; or whether or not this complainant had any such representations made to him by the said Williams, as he in his supplemental bill has alleged; nor what considerations induced this complainant to make said purchase; that this defendant had no knowledge that said Williams had any obligation from the said Emerson to convey to him any portion of said township, or that this complainant had purchased, or was in negotiation with said Williams for a purchase of any portion of said township, until after this complainant's purchase had been consummated.

And this defendant further answering says, that he is wholly ignorant of all matters and things, in this complainant's supplemental bill set forth, as respects all the actings and doings, and conduct of the said Williams, and of the motives, promptings, and considerations of this complainant, in the matter of said Williams's said negotiation and sale, and of this complainant's said purchase, prior to the sale thereof to him; neither has he any knowledge or information which would authorize him, in his judgment, to express a belief in relation thereto. He was the owner of one fourth of said township, which he purchased for the purpose, and in the expectation of making a profit on the resale of it; that the matter of the sale was committed to the said Emerson, as he has in his answer to this complainant's original bill alleged; that he has personally made no representations in respect to it to the said Williams or to this complainant; that, prior to this complainant's purchase, he was ignorant of all the circumstances connected with said purchase, and if any fraud, misrepresentation, or misapprehension was made, or entertained by any one, in respect to said township, prior to this complainant's purchase, it was unknown to, and unparticipated in, by this defendant.

And this defendant further answering says, that townships which are six miles square, when sold as townships, are computed to contain, and are sold as containing, with the usual reservations, twenty-two thousand and forty acres. That if said Williams did represent to this complainant that said township was a full township, and contained that number of acres, of which this defendant has no knowledge or belief, such representation was true in point of fact; and that this defendant and the said Williams would have been justified in so representing said township; and he knows of no reason why said township should not have been so sold. In the purchase of said township from the State, there was a deduction made to this defendant, and the other purchasers, for the land covered by water, for the reason, as this defendant understands and believes, because the State of Maine had caused said township to be surveyed into lots, and because this said purchase embraced an aggregation of lots. But this defendant does not understand nor consider, that because he thus purchased he was under any obligation thus to sell.

And this defendant further answering said, that in respect to the said

Emerson's having given to the said Williams an obligation to convey any portion of said township for six dollars and fifty cents per acre, or for any sum per acre, or for any sum except a hundred and twenty thousand dollars for said township, or at that rate for any portion of it, he had no knowledge or suspicion, until the said Emerson so stated to our counsel and to us, when our counsel were preparing said Emerson's answer to this complainant's original bill; on the contrary, this defendant supposed and believed, that said Emerson's obligation to said Williams was for the conveyance of three-fourths of said township for the sum of ninety thousand dollars.

And this defendant further answering says, that at the time of the purchase of said township of the State of the land agent, he objected to making any deduction in consequence of lands covered with water; that after considerable conversation, in which we represented to him that the State had surveyed the same into lots, and that by the return of said survey said township was represented to contain this number of acres, we thought he ought to convey the whole township for the number of acres which the surveyor had returned said township to contain; and after some considerable conversation he consented, and did convey the township as aforesaid.

And this defendant further answering says, that Mr. Edmund L. Le Bretton is mistaken in his statement, in respect to what he told me in the matter of his disagreement with the said Emerson.

I did not understand the said Le Bretton to say, or intimate, that there had been, or that he suspected there had been, any thing unfair or fraudulent in the sale of said township. His objection, made to me, was, that the township had been sold for more than a hundred and twenty thousand dollars, and that therefore he was entitled to more than his share of that sum. If any such representation had been made to me by said Le Bretton, I should have recollected it. The first intimation of unfairness or fraud of said township which I ever heard was years after.

NICHOLAS G. NORCROSS.

MAINE DISTRICT, *ss:*

June 22, 1844. Then the above named Nicholas G. Norcross, personally appeared and made oath, that the foregoing answer by him subscribed, and the matters therein alleged are true, according to his best knowledge and belief, before me,

JAMES S. ROWE, *Commissioner of circuit court United States.*

And on the same twenty-sixth day of June, the complainant filed the general replication, viz:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the answers of said defendants to his supplemental bill of complaint, for replication thereunto, saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said an-

swers of the defendants are uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is, and will be, ready and willing to aver and prove as this honorable court shall direct; and humbly prays as in his said supplemental bill he hath already prayed.

By his solicitors, W. P. FESSENDEN,
T. P. CHANDLER.

And thereafter, on the sixteenth day of August, the following deed is filed, viz:

Know all men by these presents, that, I Cyrus Goss, of Bangor, in the county of Penobscot, and State of Maine, merchant, in consideration of the sum of eight thousand dollars paid by William Emerson, of said Bangor, gentleman, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said Emerson, his heirs and assigns forever, one undivided tenth part of all the lots, from one to thirty-six inclusive, in township number three, of the thirteenth range of townships west from the east line of the State, and embracing one undivided tenth part of the whole of said township, which was assigned to the State of Maine as a township six miles square, be the same more or less; reserving, however, one hundred acres for public uses from said tenth part. To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Emerson, his heirs and assigns, to his and their use and behoof forever. And I do covenant with the said Emerson, his heirs and assigns, that I am lawfully seized in fee of the premises, that they are free of all incumbrances, that I have good right to sell and convey the same to the said Emerson, to hold as aforesaid; and that I will warrant and defend the same to the said Emerson, his heirs and assigns forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said Goss, his heirs, executors, or administrators, pay to the said Emerson, his heirs, executors, administrators, or assigns, the sum of eight thousand dollars, one half in one year, and the other half in two years, and interest annually, then this deed, as also two certain notes, bearing even date with these presents, given by the said Goss to the said Emerson, to pay the sum and interest at the time aforesaid, shall both be void, otherwise shall remain in full force.

In witness whereof, I, the said Goss, have hereunto set my hand and seal this eighth day of June, in the year of our Lord one thousand eight hundred and thirty-five.

CYRUS GOSS. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN WILLIAMS.

PENOBSCOT, *ss:*

June 11, 1835.

Personally appeared Cyrus Goss, and acknowledged the above instrument to be his free act and deed. Before me,

C. J. RAWSON,
Justice of the Peace.

And on the sixth day of September then next, by agreement of counsel, publication of testimony passed, and the following testimony on the part of the complainant was opened and filed, viz:

UNITED STATES OF AMERICA, *Maine district, ss:*

First circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and forty-four:

[L. S.]

To George S. Hillard of Boston, in Massachusetts, esquire:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Thomas Hobart, of Hanson, a witness to be examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, against William Emerson and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness to be brought before you, and while present before you to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this tenth day of July, in the year of our Lord one thousand eight hundred and forty-four.

JOHN MUSSEY, *Clerk.*

Interrogatories to Thomas Hobart, of Hanson, a witness examined on the part of the complainant.

1. State your age, place of residence, and occupation.

2. State whether or not you were at Stillwater, in the county of Penobscot, in the State of Maine, in the first part of June, eighteen hundred and thirty-five, when you arrived at Bangor, and how long you remained in that vicinity; also the distance from Bangor to Stillwater;

what is the name of the town in which the village of Stillwater is situated.

3. State whether or not you then and there saw John Williams, of Dover, (N. H.,) and John Doggett, of Boston. If yea, whether or not you heard any conversation between them in relation to the purchase by said Doggett of any part of township No. 3, in range 13, west from the east line of the State of Maine; whether or not said Williams then and there urged said Doggett to become a purchaser of a part of said township; whether or not said Williams then and there exhibited to said Doggett certain papers relating to said township, and what those papers were, to the best of your recollection: particularly whether or not one of the papers so exhibited purported to be a written obligation from William Emerson to convey a portion of said township; and if so, what portion, and at what price per acre.

4. State whether or not said Williams, when he exhibited said written paper, informed said Doggett that the price mentioned therein was not the true price for which said Emerson had agreed to sell the same; whether or not he gave said Doggett and yourself distinctly to understand that six dollars and one half per acre was the price, and the only price, for which said Emerson had agreed to sell the same; and what he said upon the subject, if any thing.

5. State whether or not said Williams did or not, himself, propose to become a purchaser of some portion of said township, under said written agreement, and on the terms therein stated. If he said any thing on that subject, please state it particularly, to the best of your present recollection.

6. Did you examine said written paper, or only hear it read? If the former, was the signature of William Emerson his own writing? Please state the substance of it as near as you can.

7. Did or not said Doggett then agree to purchase any part of said township under said written obligation, and if so, what part? Do you recollect whether or not he signed any written agreement to that effect; and if so, was said agreement written and signed upon said written obligation of said Emerson?

8. Did you afterwards, and before said township or any part thereof had been conveyed to Doggett and others, have any conversation with said Emerson in regard thereto, and his obligation to said Williams? If yes, what was your motive in having said conversation, what did said Emerson say, and why did you not so purchase?

9. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. FESSENDEN & WM. P. FESSENDEN,
Solicitors for complainant.

Received and filed, June 26, and a copy served upon defendants'

counsel on the 29th of June, with notice that a commission would issue on the tenth day of July.

Cross interrogatories to Thomas Hobart.

1. Has any paper purporting to be an obligation from William Emerson to John Williams, to convey a portion of said township, or a copy of such a paper, been exhibited to you by any one; if yea, when and by whom; and annex the same, or a true copy, to your deposition.

2. If you have said you heard a conversation between the said Williams and Doggett, state the time of said conversation; what introduced it; and if said Williams made any verbal declaration in respect to the price which he was to pay for said township.

3. Did you make any memorandum of any of said conversation? Can you relate the language used by the parties, or do you give your present impressions; and when was your attention first called to said conversation, and by whom?

4. If you say you had any conversation with said Emerson as inquired of, did you communicate the same to said Doggett; if nay, why did you not?

J. P. ROGERS, and
JAS. S. ROWE,
Solicitors for defendants.

Received and filed on the ninth day of July.

Answers of Thomas Hobart to the interrogatories proposed on the part of the complainant.

1. To the first interrogatory he says: I am seventy-five years old; I reside in Hanson, and am a trader, and engaged in agriculture.

2. To the second interrogatory he says: I was at Stillwater, in the county of Penobscot, and State of Maine, in the first part of June, eighteen hundred and thirty-five. I arrived at Bangor in the early part of June, and remained there for about three months. The distance from Bangor to Stillwater is about seven miles. Stillwater is in the town of Orono.

3. To the third interrogatory he says: I did then and there see John Williams, of Dover, and John Doggett, of Boston. I heard a conversation between them in relation to the purchase by said Doggett of a part of township No. 3, range 13, west from the east line of the State of Maine. The said Williams did urge the said Doggett to become a purchaser of a part of said township. Said Williams then and there exhibited to the said Doggett certain papers relating to the said township; among them the certificates of John Towle, Benjamin Dyer, and John Thomas, and also a written obligation from William Emerson to convey three-fourths of the said township at six dollars and a half per acre.

4. To the fourth interrogatory he says: Said Williams, when he exhibited said written papers, did not inform said Doggett that the price mentioned therein was not the true price for which the said Emerson had agreed to sell the same; but he gave said Doggett and myself dis-

tinctly to understand that six dollars and one half per acre was the price, and the only price, for which the said Emerson had agreed to sell the same. He said that he meant to keep one-eighth himself, and that he should like to keep more, but that the cost was considerable.

5. To the fifth interrogatory he says: Said Williams did propose to become a purchaser of one-eighth of said township under said written agreement, and on the terms therein stated. I have stated what he said on that subject in the close of my reply to the fourth interrogatory.

6. To the sixth interrogatory he says: I examined said written paper, and also heard it read. I cannot say whether the signature of William Emerson was his own writing, as I am not familiar with his handwriting. The substance of it was, that Mr. Emerson gave him (Williams) the refusal of three quarters of the township until the eighth of June, at six dollars and a half per acre.

7. To the seventh interrogatory he says: Said Doggett agreed to purchase one quarter part of said township under said written obligation. He signed a written agreement to that effect, which was written on the bottom of Mr. Emerson's obligation.

8. To the eighth interrogatory he says: I did, afterwards, and before the conveyance of the said township to Doggett and others, have a conversation with said Emerson in regard thereto, and upon his obligation to said Williams. I thought of taking an eighth of the township, and I went to ask Mr. Emerson if the certificates were genuine. He said that they were, and that implicit reliance might be placed upon them. He said he had given Williams an obligation, and had subsequently agreed to extend the time. I did not purchase, because I heard afterwards that the township was not equal to the representations.

9. To the ninth interrogatory he says: I know not.

Answers to cross interrogatories proposed by the defendants.

1. To the first cross interrogatory he says: A copy of said paper has been exhibited to me this day by Mr. Doggett's brother; and I annex the said copy to my deposition, marked A.

2. To the second cross interrogatory he says: I could not state the time of the said conversation. Mr. Doggett and I were together, and Mr. Williams introduced the conversation by requesting us to become purchasers. He told us that he was to pay for his part of the said township at the rate he sold it to us. By reference to a memorandum, I find this conversation was on June eighth, eighteen hundred and thirty-five.

3. To the third cross interrogatory he says: I did make a memorandum of said conversation. I remember some of the language used, but I have stated generally my impressions. My attention was called to the conversation within a few days by Mr. Doggett.

4. To the fourth cross interrogatory he says: I think I did communicate this conversation to Mr. Doggett.

THOMAS HOBART.

1037.

A.

JOHN WILLIAMS, ESQ.,

Dear Sir: In accordance to your request respecting township No. 3, range 13, I will give you the refusal of three-fourths of said township until the eighth of June next, at six and one-half dollars per acre, payment one-third cash, the residue in one and two years, equal payments, with interest annually. I shall retain one-fourth for myself, Mr. Farrar, and Mr. Goss.

Respectfully yours,

(Signed,) WILLIAM EMERSON.

Bangor, May 19, 1835.

Paper marked A, referred to in the annexed deposition of Thomas Hobart.

GEO. S. HILLARD, *Commissioner.*

UNITED STATES OF AMERICA,

District of Massachusetts, ss:

City of Boston. On the seventeenth day of July, A. D., 1844, the aforesaid deponent came before me, and being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, he gave the foregoing deposition, and subscribed the same, which was reduced to writing by me. Taken by virtue of the commission hereto annexed, and to be used in the cause therein mentioned.

GEO. S. HILLARD, *Commissioner.*

UNITED STATES OF AMERICA,

Maine district, ss: First circuit.

[L. S.] The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and forty-four.

To William H. Y. Hackett, of Portsmouth, in the district of New Hampshire, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Charles W. Cutter and Edward Rundlet, of said Portsmouth, witnesses to be produced and examined on behalf of the complainant, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, against William Emerson and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your pre-

sence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this tenth day of July, in the year of our Lord one thousand eight hundred and forty-four.

JOHN MUSSEY, *Clerk.*

PORTSMOUTH, N. H., *July* 23, 1844.

The execution of the within commission will be found in the annexed papers containing the answers of said Edward Rundlett and Charles W. Cutter to the following interrogatories and cross interrogatories.

W. H. Y. HACKETT,
Commissioner.

Interrogatories to Charles W. Cutter and Edward Rundlet, witnesses examined on the part of the complainant.

1. State your age, occupation, and place of residence.

2. State whether or not you were in Bangor, in the State of Maine, at any time during the early part of the month of June, eighteen hundred and thirty-five; on what day you arrived there, and how long you remained, to the best of your recollection; whether or not, while at said Bangor, you saw John Williams, of Dover, N. H., and John Doggett, of Boston, or either of them; and whether you saw, while there, any other gentleman from Portsmouth, N. H.; and, if so, whom.

3. State whether or not, while you were at Bangor, at that time, an application was made to you to become a purchaser of any part of a township of land known as number three, in the thirteenth range west of the east line of the State of Maine, then owned, or said to be owned, by William Emerson and others. If yea, state by whom such application was made, and when, to the best of your present recollection.

4. If you answer that such application was made by John Williams, of Dover, state whether or not said Williams made any representations to you concerning an obligation, a written paper, from William Emerson, agreeing to convey three-fourths of said township number three; whether or not said written paper, or any paper of that description, was then or afterwards exhibited to you by said Williams; whether or not the same was signed by said Emerson, and what were the terms and substance thereof, as near as you can recollect the same.

5. Whether or not said Williams proposed that a company be formed to purchase said three-fourths of said township, according to the terms of such written paper, or in any other manner; and whether he proposed to be one of any such company to be so formed.

6. Whether you and others from Portsmouth did or did not, after-

wards, agree with said Williams to purchase any part of said township; and, if so, what part each; whether or not said written paper, signed by said Emerson, was exhibited to you pending the negotiation, and before you so agreed to purchase; whether or not you so agreed to purchase on the terms stated in said paper; whether or not you were informed, by said Williams, that the price therein named was not the true price for which said Emerson proposed or was willing to sell the same; whether or not, at that time, or at any time during the negotiation, and before you agreed with said Williams to become a purchaser of some part of said township, you were informed, or had any reason to suppose, that said written paper stated a larger price than said Emerson had, in fact, agreed to sell said land for; whether or not you had any reason to suppose or believe that said written paper concealed, or was calculated to conceal, the fact that said township of land was not a full township, or that a deduction had been made for water in the sale thereof by the State; whether or not any statements were made or information given on these points, by said Williams, at the time he exhibited said paper to you; and, if any such were made, what they were.

7. Whether or not said Williams informed you that the complainant had agreed to take any portion of said land on the terms mentioned in said written paper; and whether or not, when said paper was exhibited to you at any time, there was written thereon an agreement, signed by the complainant, to the above effect; and whether or not you, and certain other persons, then or afterwards signed on the same paper an agreement to take certain portions of said land under said written obligation, or according to the terms thereof. If yea, who were those persons, and what part did each severally agree to take?

8. Whether or not said Williams did agree to purchase a part of said township, and did, in fact, receive a deed of some part thereof; whether or not you, at the time, supposed and believed that he was to purchase, and did purchase, the same on like terms with yourself; and whether or not you, and other purchasers, at that time and on that supposition, agreed to pay, and did pay him, a consideration for his trouble and agency in the business. If yea, what that consideration was; and whether or not, at the time you so paid him, or agreed to pay him, or at any other time while said negotiation was pending, he stated that he derived no profit from the transaction, or to that effect?

9. Whether or not said Williams, at any time while your negotiation with him was pending, and either before or after said paper was so exhibited, expressly stated that the price named in said paper was the lowest for which said land could be purchased of said Emerson and others. Please state all you recollect on this point.

10. Whether or not you discovered that a deduction had been made for water in the sale of said township by the State; and, if so, when you first made such discovery; whether or not you discovered, at any time previous to completing the purchase and receiving a deed, that said written paper did not state the true price for which said Emerson had agreed to sell; and whether or not you were induced to purchase

said land at the rate of six dollars and one-half per acre, by the terms of said written paper, and the belief produced thereby.

11. Whether you and others, and who, did complete your purchase of portions of said township, and take a deed or deeds thereof; what you paid for the same, and how you paid. If by notes, state the tenor thereof, and to whom the same were made payable; whether or not you gave mortgages of the land, and to whom.

12. Whether or not, after said notes were written, and before a deed was received, you discovered that an allowance had been made for water in the sale of said township by the State; whether or not you then had any conversation with said Williams on that subject, and what he said in reference thereto; whether or not he expressly stated that the owners would not make any allowance on that account, or to that effect.

13. Whether or not you had a controversy with said Williams, before you had received a deed, touching an allowance made by the State for water, in the sale of said township; whether or not you and others then, before you had received a deed, called upon William Emerson, and conversed with him on the subject of that allowance. If yea, state who were present, and whether or not much conversation was had, and the subject of the controversy fully explained to said Emerson; and whether or not said Emerson, in that conversation, or at any other time previous to your receiving a deed, said, or in any way intimated, that said land was sold, or agreed to be sold, for the gross sum of ninety thousand dollars for the three-fourths of said township, or on any other terms than those stated in his written obligation before referred to.

14. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject [of] this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. FESSENDEN & W. P. FESSENDEN,
Solicitors for complainant.

Received and filed June 26th, and a copy served upon defendants' counsel on the 29th of June, with notice that a commission would issue on the tenth day of July.

Cross interrogatories to Charles W. Cutter and Edward Rundlet.

1. If you say the complainant's name was signed to any paper or agreement to take any portion of said township, state if you saw him sign it, or know what induced him to sign it, and the terms of said obligation.

2. Did not said Williams act, or did you not consider said Williams was acting, as your agent and the agent of the other Portsmouth gentlemen in the purchase of said township; and had you or they any conversation with this complainant in said purchase?

3. Have you any personal knowledge what induced this complainant to make his said purchase, or that said Williams made to him any re-

presentations whatsoever prior to his purchase? If yea, state the same, and the sources of your information. This interrogatory excludes all declarations of said Doggett, subsequent to his said purchase, or prior thereto, unless made in the presence of said Williams or these defendants, or some of them.

4. Did you have any conversation with Edmund L. Le Breton, before or after your said purchase, respecting the same, or did said Le Breton propose or offer to obtain any information for you in respect to it? If yea, state fully the conversation.

5. Were not your complaints limited to this—that you was entitled to have the land at the price actually paid for it by Williams, and this because Williams was your agent and made the purchase for you?

Defendants object to the fourth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth interrogatories, so far as they relate to any matters in which this complainant had no interest, or was not present.

J. P. ROGERS & JAS. S. ROWE,
Solicitors for defendants.

Received and filed on the ninth day of July.

Answers of Edward Rundlet to the interrogatories proposed on the part of the complainant.

1. To the first interrogatory the deponent, the said Edward Rundlet, says, that he is thirty-eight years of age; that he is by profession a physician, and his place of residence is Portsmouth, New Hampshire.

2. To the second interrogatory he says, that he was in said Bangor in the early part of June, eighteen hundred and thirty-five, to wit, on the fourth or fifth of said June, he arrived in said Bangor, and remained there until the eleventh or twelfth of the same June, and that he then and there saw both the said John Williams and John Doggett; and that he then and there saw Ichabod Bartlett, Charles W. Cutter, and John T. Goddard, of said Portsmouth.

3. To the third he says, that while he was at Bangor, as before stated, an application was made to become a purchaser of a part of a township of land known as number three, in the thirteenth range, west of the east line of the State of Maine, then owned, or said to be owned, by William Emerson and others. Said application was made by said John Williams, and on or about the seventh day of June, A. D. eighteen hundred and thirty-five.

4. To the fourth he says, that said John Williams, then of Dover, informed this deponent, that he had said William Emerson's obligation, in writing, agreeing to convey said township number three; and said obligation was then, or the next day, exhibited to this deponent. Said obligation purported to have been signed by said William Emerson, and to bind him to convey to said John Williams said three-fourths of said township, for six dollars and fifty cents per acre, till the end of the eighth day of said June, reserving one-fourth to said William Emerson,

Goss, and Farrar. The terms of payment to be one-third cash, one-third in one year, and one-third in two years.

5. To the fifth he says, that said John Williams did propose to this deponent, and the other gentlemen before named, of Portsmouth, that a company should be formed to purchase said three-fourths of said township, according to the terms of said written paper, and said Williams proposed to be one of said company.

6. To the sixth he says, that he, and the other gentlemen from Portsmouth, did afterwards agree with said Williams to purchase one-tenth part each of said township, and said obligation of said William Emerson was exhibited to this deponent, and the other Portsmouth gentlemen, while the negotiation was pending, and before it was agreed to make said purchase; and this deponent, and said other gentlemen, did agree to make said purchase upon the terms stated in said paper. That this deponent was not informed by said John Williams, that the price then named was not the true price for which said William Emerson proposed or was willing to sell the same; and this deponent had not, at the time of said negotiation, nor before he agreed to become a purchaser of his said proportion of said township, been informed, nor had he any reason to suspect, that said written paper stated a larger price than said William Emerson had, in fact, agreed to sell said land for. Nor had he any reason to suppose, or believe, that said written paper concealed, or was calculated to conceal, the fact that said township of land was not a full township, or that a deduction had been made for water in the sale thereof by the State. Nor were any statements made, or information given, on said points by said John Williams, at the time he exhibited said paper to this deponent.

7. To the seventh he says, that said John Williams did inform this deponent, that the complainant, John Doggett, had agreed to take a portion of said land, upon the terms mentioned in said written paper; and when said paper was exhibited to this deponent, there was written thereon an agreement, purporting to have been signed by said John Doggett, to that effect; and this deponent, and the other gentlemen before named, afterwards signed, on the same paper, an agreement to take certain specified portions of said land, under said written obligation, and according to the terms thereof. The persons were: Ichabod Bartlett, who agreed to take one tenth; Charles W. Cutter, who also agreed to take one-tenth; John T. Goddard, who in like manner agreed to take one-tenth; and this deponent, who agreed to take one-tenth.

8. To the eighth he says, that said John Williams did agree to purchase a part of said township, but this deponent was not present when his deed was delivered, if any, in point of fact, were delivered.

This deponent at the time did suppose and believe, that said John Williams was to purchase, and did purchase, the same on the like terms with this deponent; and this deponent, and the other purchasers, at that time and upon that supposition, did agree to pay, and did pay, said John Williams a consideration for his trouble and agency in the business. That consideration was one thousand dollars, and was paid by the pur-

chasers in the proportion of their respective purchases; this deponent's proportion being one hundred thirty-three dollars thirty-three cents; for which he gave said John Williams his note, which he subsequently paid at the Piscataqua Bank, in Portsmouth. At the time said negotiation was going on, and said notes given for said consideration, said John Williams stated that he derived no profit from the transaction, and said consideration was paid him on that ground, and with that understanding.

9. To the ninth he says, yes.

10. To the tenth he says, that he did discover, upon application to the land office, that there was more than the average quantity of water in said township; and that it had been sold by the State for a stipulated sum, and not by the acre. This led the purchasers to enquire if said Emerson would require the township to be paid for as a full township; and they were answered by said Emerson, through said John Williams, in the affirmative. This was after the contract was made, and before the deeds were delivered. But this deponent did not discover at any time previous to completing said purchase and receiving the deed, that said written paper did not state the true price for which said William Emerson had agreed to sell. This deponent was induced to purchase said land at the rate of six dollars and a-half per acre under the belief that said obligations contained the most favorable terms upon which said land could be had.

11. To the eleventh he says, that this deponent and said Ichabod Bartlett, John T. Goddard, and Charles W. Cutter, did complete their purchase of portions of said township, and take separate deeds of their respective proportions thereof. This deponent paid for his proportion fourteen thousand three hundred and thirty dollars, or about that sum; and he paid it by his notes, dated June eighth, eighteen hundred and thirty-five, one for four thousand eight hundred twenty-six dollars and fourteen cents, and payable to said William Emerson or order, in sixty days and grace, at one of the banks in Boston, and signed by this deponent as principal, and John T. Goddard, Ichabod Bartlett, and Charles W. Cutter, as sureties; one for four thousand seven hundred seventy-five dollars, and payable to said William Emerson or order, in one year, with interest; the other for four thousand seven hundred and seventy-five dollars, and made payable to said William Emerson or his order, in two years, with interest annually. The last two notes were secured by a mortgage of this deponent's portion of said land to said William Emerson.

12. To the twelfth he says, that, after said notes were made, and while the papers were in process of being drawn, but before the delivery of them, the purchasers, including this deponent, discovered that the water in said township had not been included in the survey; and they called the attention of said John Williams to that fact. After some conversation among the purchasers, including said John Williams, it resulted that said Williams was requested to confer with said Emerson upon the subject, and ascertain if he would require payment for a full

township, without any deduction on account of the water. Said Williams went out for the purpose of conferring with said Emerson upon that subject, and upon his return he said, they (the owners) would require payment for a full township.

13. To the thirteenth he says, that he had a controversy with said Williams, before this deponent had received a deed, touching an allowance made by the State for water in the sale of said township; and this deponent and others thereupon, and before they had received their deeds, called upon said William Emerson, and conversed with him upon the subject of that allowance; said Ichabod Bartlett, Charles W. Cutter, and this deponent, were present. This deponent is not able to say whether said John T. Goddard was present or not. There was a good deal of conversation had upon the subject for an hour or more, and the subject of the controversy fully explained to said Emerson. But said Emerson did not, at that conversation, nor at any other time previous to the delivery of said deeds, say or intimate that said land was sold, or agreed to be sold, for the gross sum of ninety thousand dollars for the three-fourths of said township, nor upon any other terms than those stated in his written obligation before referred to.

14. To the fourteenth he says, no.

Answers to cross interrogatories proposed on the part of the defendants.

1. To the first cross interrogatory he says, that he did not see the complainant, the said John Doggett, sign said paper or agreement to take any part of said township, nor does he know what induced him to sign it. The terms of said agreement were the same as contained in the agreement to take a part of said township, signed by this deponent, as he has already testified.

2. To the second cross interrogatory he says, that he did consider that said John Williams was acting as the agent of this deponent and the other Portsmouth gentlemen; and this deponent had no conversation with said John Doggett in reference to said purchase to the knowledge of this deponent.

3. To the third cross interrogatory he says, he has no personal knowledge of what induced the complainant, the said John Doggett, to make his said purchase, nor does he know whether John Williams made to said John Doggett any representations whatsoever prior to his said purchase.

4. To the fourth he says, that, after the purchase was completed, and the deeds delivered, he had a conversation with said Edward L. Le Breton respecting the same, but he has no recollection that said Le Breton proposed or offered to obtain any information for this deponent in respect to it.

5. To the fifth he says, yes.

EDWARD RUNDLET.

W. H. Y. HACKETT,
Commissioner.

Answers of Charles W. Cutter, to the interrogatories proposed on the part of the complainant.

1. To the first interrogatory the deponent, the said Charles W. Cutter, says, that he is forty-five years of age; that he is by profession a counsellor at law; and his place of residence is Portsmouth, New Hampshire.

2. To the second he says, that he was at Bangor, in the State of Maine, at some time during the early part of the month of June, A. D. eighteen hundred and thirty-five, and that he arrived there, according to the best of his present recollection, the fourth day of said June, and that he remained there about a week or ten days; and that while at Bangor, he saw there said John Williams, of Dover, New Hampshire; and does not remember to have seen said John Doggett there, and that he saw other gentlemen from Portsmouth, New Hampshire, to wit, Ichabod Bartlett, John T. Goddard, and Edward Rundlet.

3. To the third he says, that while he was at said Bangor, as before stated, an application was made to this deponent to become a purchaser of a part of a township of land, known as number three, in the thirteenth range, west of the east line of the State of Maine, then owned, or said to be owned, by William Emerson and others, and that such application was made by said John Williams, and at some time between the fourth of June, eighteen hundred and thirty-five, and the eighth of the same month.

4. To the fourth he says, that said John Williams, some time previous to the eighth of said June, eighteen hundred and thirty-five, represented to this deponent that he had an obligation in writing from said William Emerson, agreeing to convey three-fourths of said township number three to said Williams, or his order; and said paper was exhibited by said Williams to this deponent on the eighth of June, eighteen hundred and thirty-five, and perhaps before that time. Said agreement purported to have been signed by said William Emerson. The price was six dollars and fifty cents per acre.

5. To the fifth he says, that said John Williams stated that said John Doggett, of Boston, had agreed to purchase one-fourth of the said township, and proposed to this deponent and said Ichabod Bartlett, John T. Goddard, and Edward Rundlet, to unite with him, the said Williams, in the purchase of one-half of said township, at the rate of one-tenth each, according to the terms of said paper or obligation.

6. To the sixth he says, that this deponent, and the other gentlemen from Portsmouth, before named, did afterwards agree with said Williams to purchase a part of said township, to wit, one-tenth part each; and said written paper was exhibited to the purchasers pending the negotiation, and before they so agreed to purchase, and they did agree to purchase on the terms stated in said paper. This deponent was not, and, so far as he knows or believes, the other gentlemen from Portsmouth were not informed, by said Williams that the price there named was not the true price for which said Emerson proposed, or was willing, to sell the same. And this deponent was not informed at any time

before he agreed to become a purchaser as aforesaid of a part of said township, nor had he any reason to suppose, that said written paper stated a larger price than said Emerson had in fact agreed to sell said land for. Nor had he any reason to suppose or believe that said written paper concealed, or was calculated to conceal, the fact, that said township of land was not a full township, or that a deduction had been made for water in the sale thereof by the State. Said Williams made no statements, nor was any information given, on said points at the time he exhibited said paper to this deponent.

7. To the seventh he says, that said Williams did inform this deponent that the complainant, John Doggett, had agreed to take one quarter part of said township on the terms mentioned in said written paper. And said Williams exhibited to this deponent, pending said negotiation, an agreement to the above effect, which purported to have been signed by said John Doggett, and this deponent, and the Portsmouth gentlemen before named, signed on the same paper an agreement to take certain portions of said township, according to the terms thereof. Those persons were this deponent, said Ichabod Bartlett, Edward Rundlet, and John T. Goddard, who agreed to take one-tenth thereof each.

8. To the eighth he says, that said John Williams did agree to purchase one-tenth of said township, but whether he actually received a deed thereof this deponent does not know. This deponent, at the time, did suppose and believe that said Williams was to purchase, and actually did purchase, the same on the like terms with this deponent; and this deponent, and the other purchasers, at that time, and upon that supposition, agreed to pay, and did pay him, one thousand dollars, as a consideration for his trouble and agency in that business. And, at the same time, he stated that he derived no profit from the transaction, and said sum was paid him upon the belief that such was the fact.

9. To the ninth he says, that, at said time of said negotiation, said Williams expressly stated, several times, that the price named in said written paper was the lowest for which the owners of said land would sell the same.

10. To the tenth he says, that this deponent, and the other Portsmouth purchasers, discovered, after contract to purchase was made, but before the deeds were executed, that an allowance was made for water by the State to the purchasers of said land; but they did not discover, at any time previous to completing the said purchase and receiving the deeds, that said written paper did not state the true price for which said Emerson had agreed to sell. This deponent was induced to pay the price of six dollars and fifty cents per acre for said land under the belief that it could not be had upon any lower terms. And this belief was produced by the said paper and the representations of said John Williams.

11. To the eleventh he says, that this deponent, together with said Edward Rundlett, John T. Goddard, and Ichabod Bartlet, did complete their purchase of the proportions of said land, which they had respectively agreed to purchase, and that they took separate deeds of their

proportions thereof. This deponent paid for his part fourteen thousand three hundred and some odd dollars, and he paid it by his three notes, dated on or about the eighth of June, eighteen hundred and thirty-five, one for four thousand eight hundred twenty-six dollars and fourteen cents, and made payable to said William Emerson, or his order, in sixty days and grace, at some bank in Boston, and signed by this deponent as principal, and by said Ichabod Bartlett, Edward Rundlet, and John T. Goddard, as sureties. One for four thousand seven hundred and seventy-five dollars, and payable to said William Emerson or order, in one year, with interest. The other for four thousand seven hundred and seventy five dollars, and made payable to said William Emerson or his order, in two years, with interest annually. The last two named notes were secured by a mortgage of this deponent's part of said land to said William Emerson. This deponent, having inadvertently omitted to state fully the terms of said written paper named in the fourth interrogatory, in his answer to said interrogatary, adds to said answer, that the price of said land was to be, as before stated, six dollars and fifty cents per acre, and the payments were to be one-third cash, one-third in one year, one-third in two years, with interest.

12. To the twelfth he says, that, after said notes were drawn, and before the deeds were delivered, this deponent, and the other purchasers, discovered that an allowance had been made for water in the sale of said township by the State, and they called the attention of said Williams to this fact, and represented that they should pay the owners of said land only for the quantity for which they had paid the State. He informed this deponent, and the other purchasers, that this deduction had been obtained from the State as a special favor, and that the owners could not make any allowance on that account.

13. To the thirteenth he says, that this deponent, and the other Portsmouth purchasers, had a disagreement with said John Williams before the delivery of the deeds, touching the allowance made by the State for water in the sale of said township, and subsequently, and before the delivery of said deeds, this deponent, and the other Portsmouth purchasers, spent the evening with the said William Emerson, by his invitation, and at his house; Cyrus Goss, of said Bangor, according to the best of the deponent's present recollection, being the only other person present on that occasion. The subject of said allowance and purchase were conversed about, although the deponent cannot recall at this distance of time the particulars of the conversation. But this deponent has no hesitation in saying, that said William Emerson did not at that time, nor did he at any other time, while we remained in Bangor, say, or in any manner intimate, that said land was sold, or agreed to be sold, for the gross sum of ninety thousand dollars for their three-fourths of said township, or on any other terms than those stated in his written obligation before referred to.

14. To the fourteenth, he says, no.

Answers to the cross interrogatories proposed on the part of the defendants.

1. To the first cross interrogatory, the deponent, the said Charles W. Cutter, says, that he did not see the said John Doggett sign said agreement; that he does not know what induced said Doggett to sign said agreement; the terms thereof this deponent has already stated in answer to the foregoing direct interrogatories.

2. To the second, he says, that this deponent supposed that he and the other Portsmouth purchasers were contracting with said William Emerson, through said John Williams, and that said Williams was a co-contractor with the other purchasers, and the agent of them; and he had no connection with the complainant, the said John Doggett, in said purchase.

3. To the third, he says, no.

4. To the fourth, he says, that, after the purchase made and completed, the notes given, and deeds delivered, this deponent had some reason to suspect foul play, and stated those suspicions to said Le Breton, one of the purchasers from the State, and inquired of him the amount which the purchasers from the State were to receive, and stated the amount which this deponent and the other Portsmouth purchasers had paid. In reply, he stated, that he did not know precisely the amount which the purchasers from the State were to receive, but that they were to meet that afternoon for the purpose of dividing the purchase money. And this deponent then requested said Le Breton to state to his co-owners the facts which this deponent communicated to him; and this deponent, at the said time, stated to said Le Breton, either that the said Le Breton and his co-owners were entitled to the amount which this deponent and the other Portsmouth purchasers had paid for said land, or that this deponent and the other Portsmouth purchasers were entitled to receive the difference from said Williams. The said Le Breton then promised to make the said communication to his co-owners, and report to this deponent the facts.

5. To the fifth, he says, that this deponent's controversy with said Williams, and that of the other Portsmouth purchasers, was limited to the subject matter implied in said cross interrogatory; but this deponent and the other Portsmouth purchasers have always complained that both said William Emerson and said Cyrus Goss were either parties or privy to the fraud which said John Williams practised upon this deponent and the other Portsmouth purchasers in this matter.

CHARLES W. CUTTER.

W. H. Y. HACKETT, *Commissioner.*

And, on the same sixth day of September, the following deposition, on the part of the defendants, was opened and filed, viz:

UNITED STATES OF AMERICA,

Maine district, ss: First circuit.

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of
[L. S.] May, in the year of our Lord one thousand eight hundred and forty-four.

To Frederick Hobbs and Sylvanus W. Robinson, of Bangor, in said Maine district, esquires, or to either of them, respectively:

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and, by these presents, do authorize and empower you, to take the answers to the interrogatories hereunto annexed of George B. Moody, a witness to be produced and examined on behalf of the defendants, to be used in a certain cause now pending in said court, wherein John Doggett is complainant in equity, against William Emerson and others, defendants; and to this end, at certain days to be by you appointed for that purpose, to cause said witness to be brought before you, and, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence; and the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the hon. Roger B. Taney, at Portland, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty-four.

JOHN MUSSEY, *Clerk.*

Maine district, ss: *August* 29, 1844.

Pursuant to the within commission to me directed, I caused the said George B. Moody to come before me, on this twenty-eighth day of August, A. D. eighteen hundred and forty-four, and, while present before me, he was carefully examined, on oath, touching the premises; and, having taken the examination, I caused the same to be reduced to writing by said deponent in my presence, who subscribed the same before me, on this twenty-ninth day of August, eighteen hundred and forty-four.

The execution of this commission appears in the deposition of George B. Moody herewith returned.

FRED. HOBBS, *Commissioner.*

Interrogatories to George B. Moody, proposed on the part of the defendants.

1. Please state your age, occupation, and place of residence, and whether or not you were a partner of Edmund L. Le Breton, esq., in the year eighteen hundred and thirty-five?

2. State whether or not you and said Le Breton were jointly interested in township number three, range thirteen, west from the east line of the State of Maine? If yea, please annex to your answer the instrument by which said interest was conveyed to you, or a copy thereof, if in your power; and if not, state the nature and extent of that interest, and from whom derived.

3. State whether or no, according to your knowledge or information, the defendant, Emerson, had power to sell said township prior to and at the time of your purchase of said interest; and, if yea, by whom such power was executed, and whether or no it was ever revoked; and, if revoked, whether or not a new power was granted; and, if so, by whom such new power was executed; whether or no you, or said Le Breton, executed any power to said Emerson; and, if yea, annex a copy of the same; whether or no you, or said Le Breton, gave any instructions to said Emerson in relation to the sale of said township; and, if yea, annex a copy, if they were written, or state them, if oral.

4. Please state, according to your knowledge or information, and especially any information derived from said Le Breton, what question, doubt, or suspicion, relative to any unfair or improper conduct on the part of said Emerson, in the sale of three-quarters of said township, was entertained at the time by you, or said Le Breton, or any other person, and the grounds therefor; and who were the persons, if any, supposed to be wronged by such conduct.

5. Please state whether or no there was any suspicion entertained by you, or any other person interested in said township with you, that such a fraud had been practised on this complainant and others who purchased at same time, as would affect the validity of the sale, and the notes given in payment. If yea, state by whom such suspicion was entertained, upon what it was founded, and all that was said on the subject by any person so interested, and by whom said.

JAMES S. ROWE,
Solicitor for the defendants.

Received and filed, August 16th, and a copy served upon complainant's solicitors on the same day, with notice that a commission would issue on the 26th day of the same month.

Cross interrogatories to George B. Moody, proposed on the part of the complainant.

The counsel for the complainant object to the whole subject matter of these interrogatories, and to the questions, and any answers thereto, on the ground that said interrogatories have no relation to the matter of the supplemental bill, but are wholly irrelevant thereto; neither do said interrogatories come within the order of the court touching said supplemental bill; and, reserving all said objections, the complainant propounds—

1. Whatever you state touching the subject matter of any of said interrogatories, you *you* will please state your own personal knowledge thereof, and what sources of information you derive the same from. Do you know any thing of the subject matter of the third interrogatory, except from hearsay? And if you state any thing touching any written power, state if the same is lost or destroyed, before testifying as to its contents; and how you know the same is lost or destroyed; and whether the same was ever perfected and became operative, or whether said Emerson ever acted under the same.

The complainant further objects to the fourth and fifth interrogatories as irrelevant, and as referring to mere matters of hearsay.

2. Please state whether the principal business relative to the negotiation and sale of your proportion of township number three, thirteenth range, was not conducted by your partner, Mr. Le Breton.

WILLIS & FESSENDEN,
Solicitors for plaintiff.

Received and filed, August twenty-fourth.

Answers of George B. Moody to interrogatories proposed on the part of the defendants.

1. I have been engaged in the profession of the law in Bangor, where I now reside, since the year eighteen hundred and thirty-two, and in the year eighteen hundred and thirty-five was a partner of Edward L. Le Breton, esquire, in professional business.

2. Mr. Le Breton and myself had a joint interest in said township in eighteen hundred and thirty-five. We became interested in it by purchase of Messrs. Norcross and Mason, two of the defendants in this case, having received their obligation to convey one undivided eighth part of said tract to us, for which we gave them our notes. This was in the spring of 1835, or last of the winter preceding. That obligation is not in my possession. I do not recollect to have seen it since we parted with our interest in the township, and I do not know what became of it. I cannot recollect the precise terms of that instrument. I think it was an unsealed paper, signed by Norcross and Mason, acknowledging that we had purchased one-half of their interest, which was one-quarter, and that we should receive a deed from the State of one-eighth whenever deeds were executed from the State; or, it might be, that the quarter was to be conveyed to Norcross and Mason, and one-eighth from them to us; and that said instrument set forth the amount which we had paid, or had given our notes to them for.

3. Said Emerson had authority to sell said township; whether said authority was given before or immediately after we became interested in it, I cannot positively say. I have been informed that one power was revoked, and a new one was granted; or, on reflection, that said power first given was varied, by verbal authority, only as to the price of sale. I have no knowledge that any second written power was ever given; I never executed any power, nor, to my knowledge, did Mr. Le Breton. I have no recollection that Mr. Le Breton or myself ever gave Mr. Emerson any instructions about the sale. His authority was derived from Mr. Roberts, Mr. Farrar, and Messrs. Norcross and Mason.

4. I was aware that Mr. Emerson gave a refusal of said township to John Williams; and, after having ascertained that the township was to be taken by Williams or his assigns, under that refusal, Mr. Le Breton and myself entertained some apprehension as to Mr. Emerson's course as affecting our interest in the proceeds of said sale. In this apprehension Mr. Norcross and Mr. Roberts participated. I know this, from our having mutual conversations and consultations on the subject. This

feeling, so far as I was concerned, and, according to my recollection, so far as the others were concerned, was produced by an apparent disinclination on the part of Mr. Emerson to communicate freely on the subject with us, and by the knowledge of the fact, that while Mr. Emerson had given the refusal at a certain price, six dollars and fifty cents per acre, I think, we were to receive only at the rate of one hundred and twenty thousand dollars for the township, the sum for which he was authorized to sell. I do not feel certain that this fact was known to me then, but think that Mr. Le Breton had so heard and informed me. Some uncertainty whether the land covered by water was to be paid for or not, I think, was another cause why we were not altogether satisfied. These considerations, and others now forgotten, produced in my mind, and, as I judge from my recollection of the tenor of these conversations, on the minds of Messrs. Roberts, Le Breton, and Norcross, the feeling, that, as between Mr. Emerson and ourselves, some explanation was needed. I do not intend to say that we charged any unfair dealing, or any purpose of unfair dealing, towards us upon Mr. Emerson, but that we entertained the feeling that he was bound to explain more fully than he seemed willing to do the true state of the case, and to remove all cause of suspicion that in the sale we were not to receive in the same proportion as he did. I do not recollect that any suspicion ever entered my own mind, either from circumstances within my knowledge, or from the expressed opinions of any one else, that there was any unfairness or improper conduct practised or intended by Mr. Emerson, or by any person authorized by him, towards the purchasers of the land; I of course refer to the time of the sale, and subsequently, and not to any time since the commencement of this suit, or any suits arising out of said township.

5. So far as respects myself, I have answered this substantially in my last preceding answer. I cannot answer for the suspicions or thoughts of others. I can only say, that I was dissatisfied, and I supposed the others interested to be dissatisfied, for the reasons before stated; and that our ground of complaint, or supposed ground of complaint, against Mr. Emerson, was confined to the relation between us and him. I do not recollect having had any apprehension, or having heard either of those interested express any apprehension, that the sale or notes would be invalidated for fraud, or that there was any fraud in the sale; they may have thought so, and may have said so, but I have no recollection of the kind. When the settlement was made, at the time of the sale, I was not present. Mr. Le Breton had an interview with Mr. Emerson and others, and there was a dispute between them, Mr. Emerson and Mr. Le Breton, of which Mr. Le Breton afterwards informed me. What he stated the particulars of that conversation to be I cannot now recollect. I do not recollect any particular expressions made use of by him, or Mr. Norcross, or Mr. Roberts, as to their doubts or suspicions in relation to this matter; nor do I recollect having had any conversation with Mr. Farrar on the subject; he was the only other person interested, except Mr. Mason, for whom Norcross acted.

To the cross interrogatories I answer—

1st cross interrogatory. I have stated from my own knowledge, except where I have been interrogated as to matters derived from the information of others. As to the power mentioned in the third answer, I can say that I have seen a written power, or copy of one, dated in February, eighteen hundred and thirty-five, signed, or purporting to be signed, by all these defendants, except Mr. Emerson. When I first saw it I cannot say. Said power was an authority to sell for one hundred thousand dollars. I knew at the time that the terms were altered, fixing the price at one hundred and twenty thousand dollars; but whether in writing, or not, I only know by information of others interested, and that information was, that said alteration was verbal, and not written. I know only of one written power. I stated, as I did about the revocation of the power in answer third, from first impression, which a moment's thought enabled me to correct.

2. The principal negotiation respecting the purchase of our (Moody and Le Breton) interest in the township was conducted by Mr. Le Breton; he made the purchase, the sale of the township; or so much as was sold was by Mr. Emerson, giving a refusal to John Williams, by virtue of the authority given to said Emerson by the owners. Mr. Le Breton went to the meeting of those interested after the sale was effected, and I did not go. After this meeting, Mr. Norcross proposed to us to take Mr. Emerson's notes for our profits, and what we had already paid out, which proposition we gladly accepted, because it relieved us from our notes to Norcross and Mason, and because we knew Mr. Emerson's notes to be perfectly good. So far as any business acts were required, respecting our interest in said tract, they were performed by Mr. Le Breton, in whose judgment and capacity I placed great confidence.

GEORGE B. MOODY.

Subscribed and sworn to, August 29, 1844, before me,

FREDERIC HOBBS,
Commissioner.

Since signing the deposition, and upon more mature deliberation, I am not satisfied that the part relating to the refusal to Williams, and to its being six dollars and fifty cents per acre, conveys a correct idea of what I mean. When I heard of said refusal, I cannot say; I did not know it was in writing, nor do I wish so to be understood. As to the price, I wish so far to modify my statement as to state it to be an impression that we had heard that the purchasers were to give more than the price which Mr. Emerson was authorized to sell for, and not that Mr. Emerson had refused it to Williams at six dollars and fifty cents per acre; for although I now know that such was the price, I think, on reflection, that I have learned it since the sale. Stating from recollection called to matters of so old a date, and which for so long a time have been dismissed from my mind, I may not have stated correctly the considerations which produced our apprehension and dissatis-

faction towards Mr. Emerson; but the nature of the feeling itself I have correctly stated, according to the most mature deliberation I could give to it.

GEORGE B. MOODY.

Subscribed and sworn to, August twenty-ninth, eighteen hundred and forty-four, before me,

FRED. HOBBS, *Commissioner.*

And said cause was continued from October term to May term, A. D. eighteen hundred and forty-five; at which term the same was argued by counsel and held under advisement by the court, and the cause continued to the next term.

And now, at October term, in the same year, after a full hearing on the motion of the plaintiff's solicitor, opposed by the solicitors for the defendants, it is ordered by the court here, that the following decree be received, filed and passed, as of the present term of this court; which decree is in the following words, viz:

JOHN DOGGETT, vs. WILLIAM EMERSON and others, } In equity.

Circuit court, Portland, May term, 1845.

This cause came on to be heard at the present term upon the bill, answers, and other pleadings and evidence in the case, and was argued by counsel. On consideration thereof it is declared by the court, that the sale of the lands in the bill, and other proceedings mentioned, was made to the plaintiff (Doggett) by John Williams, as agent of Emerson and the other co-owners of the land, and not on his own sole account, as the purchaser thereof under the written paper of the said Emerson, giving him the refusal thereof; that the sale having been so made by the said Williams, as agent as aforesaid, the oral representations made by the said Williams to the plaintiff, at the time of the sale, of the quantity of the land, and the quantity and quality of the timber thereon; and also the representations contained in the written certificates of John Thomas, John Towle, and Benjamin Dyer, in the proceedings mentioned and shown to the plaintiff at the time of the sale, are to be deemed the representations of the said Emerson and his co-owners, and are binding upon them. And it is further declared, that the plaintiff gave full faith and credit to the said representations as true, and that he made the purchase of the said land upon the basis thereof, and giving full faith and credit thereto. And it is further declared, that the said oral representations and written certificates are grossly false, and grossly misrepresent the quantity and quality of the timber thereon, and misled the plaintiff into the purchase so made by him; and that the plaintiff had not full knowledge, or means of knowledge, of their deceit and falsity until a short time before his bill was brought. And there-

upon, and for the reasons aforesaid, it is ordered and adjudged by the court, that the said sale to the plaintiff ought to be set aside and rescinded, and held to be a nullity; and it is accordingly ordered and adjudged by the court, that the said sale be, and hereby [is], set aside, rescinded, and declared to be null. And it is hereby further ordered and adjudged, that it be referred to a master in chancery of this court to take an account of the monies paid as purchase money by the plaintiff to the said Emerson and his co-owners, and received by them respectively under and in pursuance of the sale aforesaid; and that each of the defendants is to be accountable to the plaintiff for his proportion or share of the purchase money so received by him. And the said master is to consider and report what interest the said Emerson and his co-owners ought to pay to the plaintiff upon the sums of the purchase money so received by them respectively, and what equitable allowances and deductions ought to be made to them, or any of them. And the master is further to state the form of a reconveyance, to be made by the plaintiff to the said Emerson and his co-owners, of their proportions of the said land, when and so soon as they shall have complied with the decree of this court ultimately to be rendered in the premises. And the master is to be at full liberty to examine all or any of the parties on oath touching the premises, and to hear all and any testimony touching such interest and equitable allowances and deductions, and all and any other matters hereby referred to him by the court; and after fully hearing the parties, he is to make his report as soon as practicable. And all further orders are reserved until the coming in of the master's report, or the further order of this court.

And it is further ordered and adjudged by the court, that Frederick Hobbs be the master to whom the premises are referred.

And at the same term the following motion is filed, viz :

Respectfully represents Nicholas G. Norcross, one of the respondents: that in the year eighteen hundred and forty-two he filed his voluntary petition in the district court of the United States, for Maine district, praying the court to be declared a bankrupt; that such a decree was made, and that all orders of said court were duly complied with by said Norcross, and that he afterwards filed his petition, praying the said district court to decree that he, the said Norcross, be discharged from all of his debts; that, after due proceedings on said petition last named, the said district court did decree that said Norcross be discharged from all of his debts, and said Norcross received a certificate thereof according to the act of Congress in such case made and provided. And the said Norcross further says, that he thereupon employed James S. Rowe, esq., a counsellor of this court, to plead said certificate and decree in bar of said Doggett, complainant, and that he ought not to further maintain his said complaint against him; that at the time the said certificate was granted, the said Norcross was out of the State; that he wrote his correspondent at Bangor, where he, said Norcross, resided, requesting him to call upon said Rowe with his certificate, and request him to take the same, and plead the same at the next term of the cir-

cuit court in bar of said complaint as aforesaid; that said Rowe replied that he would not take the certificate, as he could use the record at Portland in place of it. That said Norcross always believed, until after the last term of this court, that said certificate and decree was so pleaded; that he now learns that said J. S. Rowe did not understand that he was employed as counsel for the said Norcross. He therefore prays the court that said case may be opened again, and that said Norcross may be allowed by the court now to plead said decree and certificate in bar of said Doggett further prosecuting said complaint against him, the said Norcross.

N. G. NORCROSS,
By WM. H. McCRILLIS,
His Solicitor.

On which motion it was ordered that notice, by copy, be served on the adverse party, and that testimony be taken by either party, giving notice to the adverse counsel.

And on the second day of April, A. D. eighteen hundred and forty-six, the following petition is filed, viz:

To the circuit court of the United States for the first circuit and district of Maine:

In chancery, between John Doggett, complainant, and William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross, defendants.

To the honorable the justices of said court, the petition of Nicholas G. Norcross, one of the above named defendants, showeth, that on the thirteenth day of September, A. D. 1841, the said John Doggett exhibited his original bill of complaint in this honorable court, against the said other defendants, and your petitioner as defendant thereto, thereby stating as therein stated, and, among other things, that he had paid certain large sums of money to the defendants, upon a certain contract of sale and purchase from them of one undivided eighth part of township number three therein mentioned, and that the same ought, for the reasons therein stated, to be rescinded, and the money, so as aforesaid paid by him, restored to him by the said defendants; and praying that the said contract of sale and purchase might be declared null, and the said defendants compelled to refund to the said complainant all moneys by them, or either of them, received, and that the parties be restored to their respective positions before the said contract was entered into, the said complainant in said bill offering to perform all acts necessary for him to perform in the premises, and further praying that he might have such further and other relief as the nature of the case might require, and as might be agreeable to equity and good conscience. That your petitioner and said defendants, being duly served with process, appeared and put in their several answers to the said original bill, severally stating, as in their several answers set forth; that such answers were replied to, and witnesses examined on both sides, and publication passed; that, on

the twenty-fourth day of May, A. D. eighteen hundred and forty-four, the said complainant exhibited his supplemental bill in this honorable court against your petitioner, and said other defendants, as defendants thereto, stating as is therein stated, and praying that the said complainant might have such and the same relief against the said defendants as is prayed for in said original bill of complaint; that your petitioner and said defendants, being duly served with process, appeared, and put in their several answers to the said supplemental bill, stating, as in their several answers to the said supplemental bill is set forth, that such answers were replied to, and witnesses examined on both sides, and publication passed; that said cause, being at issue on said pleadings, came on to be heard and tried before the justices of this honorable court at the May term of said court, A. D. eighteen hundred and forty-five, when the said justices were pleased to order and decree that the said sale and purchase ought to be set aside, as founded in gross mistake and gross misrepresentation, and that the plaintiff ought to be restored to his original rights, and receive back the purchase money, upon executing a deed of reconveyance to the defendants, and making such other allowances as, upon a hearing before a master, shall, under all the circumstances of the case, be equitable and just. And the same was referred to Frederick Hobbs, esq., one of the masters of this honorable court, for the purposes and objects stated in his commission, and before whom a hearing has been had in the matter aforesaid, but no opinion or any final decree of said court; that after the filing and exhibiting of said original bill, and after the filing of said answers to said bill, and before publication of the evidence taken under said bill, your petitioner, on the fifteenth day of February, A. D. eighteen hundred and forty-two, filed in the office of the clerk of the district court of the United States for Maine district, his petition, stating that he was owing debts, in his private right and capacity, to sundry creditors, and that he was unable to meet and discharge his said debts, and setting forth a list of his creditors, their names, the places of their residence, and the amount due to each, according to the best of his knowledge and belief; and also setting forth an accurate inventory of his property, rights, and credits, of every name and description, together with the location and situation of each portion thereof, and applying for the benefit of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August nineteenth, A. D. eighteen hundred and forty-one, notice of which petition was published in two newspapers printed within said district, and designated by the court for that purpose. And on the second day of May, A. D. eighteen hundred and forty-two, the said Norcross, and as partner in the firm of Norcross & Mason, was, by a decree of said court, duly declared a bankrupt; and, having been declared a bankrupt, on the fifth day of July, A. D. eighteen hundred and forty-two, he filed with said clerk of said court a petition, in due form of law, praying to have decreed and allowed to him a full discharge and certificate thereof from all of his debts, provable under his bankruptcy. And your petitioner in all things proceeded in due form

of law, and complied with all the orders and directions of the court in the premises, and all the requirements of said act; and on the second day of May, A. D. eighteen hundred and forty-two, it was ordered, decreed, and allowed, by said district court, that your petitioner be, and that he accordingly is, discharged from all of his debts owing by him, (the said petitioner at the time of the presentation of his petition to be declared a bankrupt.) And it was further ordered and decreed by said district court, that a certified copy of the decree, under the seal of the court, should be delivered to your petitioner as his certificate of discharge. And your petitioner did thereupon, upon such discharge and certificate —— and afterwards your petitioner, being in the State of New Hampshire, engaged in business, which required his personal presence for a long time, and at a great distance from this honorable court and the counsellors practising therein, and not having before specially retained any counsel to manage his defence, after the making of his answer, and for that purpose only, he wrote a letter to his partner, John Fiske, or our clerk in Bangor, Maine, requesting him to take his certificate of discharge, as aforesaid, and call upon J. S. Rowe, esq., one of the counsellors and solicitors of this court, and retained as counsel for the other defendants, (but whom *the* your petitioner never had retained,) and engage and retain said Rowe to adopt the necessary steps to enable your petitioner to avail himself of said decree and certificate, as a matter of defence in said cause; that his said partner sent one of his clerks in Bangor to said Rowe, with said certificate, and with the directions contained in said letter; that said clerk took said certificate to said Rowe, and communicated his instructions to him, and the said clerk understood from said Rowe that he would undertake to act as solicitor for your petitioner in the matter aforesaid, and take such steps as would enable your petitioner, without any further action on his part, (unless he should have notice from said Rowe,) to avail himself of said decree and certificate as a defence to said suit. That the said petitioner, confiding in the information obtained from said clerk to retain the said solicitor, and believing that said solicitor was acting in his behalf in the matter aforesaid, and believing if any thing further were to be done on his part, he should have notice of the same from said solicitor, took no further steps in regard to the same; and your petitioner fully believed, until after the decree of said court pronounced as aforesaid, that the said discharge and certificate had been in due form presented to the said court, in such manner as, if it were available, it might avail your petitioner in defence. That your petitioner has, since the making of said decree, discovered, and the fact is, that through a mutual mistake between the persons employed by your petitioner to retain the said solicitor, he, the said solicitor, was not, and did not consider himself retained by your petitioner, to appear for your petitioner and act in his behalf in the matter aforesaid, or as authorized by your petitioner to insist upon, plead, or in any way make use of said discharge, decree, and certificate, as a defence for your petitioner, and through such mistake did not receive any retaining fee; and that in consequence of such mis-

take, and without any neglect or fault, or want of diligence on the part of your petitioner, or any of the persons so employed by him for the purpose aforesaid, your petitioner has hitherto lost the benefit of said discharge and certificate as a defence in said cause; that no final decree has been made in this cause; that your petitioner intends to present a petition to your honors for the purpose of having the said cause reheard. Your petitioner, therefore, humbly prays, that he may be at liberty to exhibit a supplemental bill in the nature of a bill of review in the said cause, to intent that your petitioner may have in the said cause the same benefit of the said discharge and decree, and certificate, as he would have had in case the same had been duly pleaded, and in proper form presented, by way of defence, before the hearing in said cause aforesaid; and your petitioner will ever pray.

NICHOLAS G. NORCROSS.

MAINE DISTRICT, *ss: April* 1, 1846.

Subscribed and sworn to, before me,

FRED. HOBBS,
Commissioner C. C. U. States.

And at May term of the same year, and on the first day of said term, the following commission to, and report of, the master, is filed in court, viz:

UNITED STATES OF AMERICA,

Maine district, ss: First circuit.

[L. S.] The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty-five.

To Frederic Hobbs, of Bangor, in said district, esquire, a master in chancery.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the account of moneys paid as purchase money by John Doggett, plaintiff in equity, vs. William Emerson and others, defendants; and also to do and perform the other services and duties directed and required to be done and performed pursuant to the decree passed at said October term of said court, a certified copy whereof is hereto annexed for your guidance in the several matters therein specially referred to you as master in chancery. And to this end, at certain days to be by you appointed for that purpose, to cause said parties and any witnesses as aforesaid to be brought before you, and while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing. And the same so taken to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at

Portland, on the first day of May next; and to make such report as soon as practicable.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-five.

J. MUSSEY, *Clerk.*

CIRCUIT COURT, *Portland, May term*, 1845.

JOHN DOGGETT, in equity,
vs.
WILLIAM EMERSON and others.

This cause came on to be heard at the present term upon the bill, answers, and other pleadings and evidence in the case, and was argued by counsel.

On consideration whereof, it is declared by the court, that the sale of the lands in the bill and other proceedings mentioned, was made to the plaintiff, Doggett, by John Williams, as agent of Emerson, and the other co-owners of the land, and not on his own sole account as the purchaser thereof, under the written paper of the said Emerson, giving him the refusal thereof; that the sale having been so made by the said Williams, as agent as aforesaid, the oral representations made by the said Williams to the plaintiff at the time of the sale, of the quantity of the land, and the quantity and quality of the timber thereon; and also the representations contained in the written certificates of John Thomas, John Towle, and Benjamin Dyer, in the proceedings mentioned and shewn to the plaintiff at the time of the sale, are to be deemed the representations of the said Emerson and his co-owners, and are binding upon them.

And it is further declared, that the plaintiff gave full faith and credit to the said representations as true, and that he made the purchase of the said land upon the basis thereof, and giving full faith and credit thereto.

And it is further declared, that the said oral representations and written certificates are grossly false, and grossly misrepresent the quantity and quality of the timber thereon, and misled the plaintiff into the purchase so made by him; and that the plaintiff had not full knowledge or means of knowledge of their deceit and falsity until a short time before his bill was brought.

And thereupon, and for the reasons aforesaid, it is ordered and adjudged by the court, that the said sale to the plaintiff ought to be set aside and rescinded, and held to be a nullity; and it is accordingly ordered, adjudged by the court, that the said sale be and hereby [is] set aside, rescinded, and declared to be null.

And it is hereby further ordered and adjudged, that it be referred to a master in chancery of this court to take an account of the moneys paid as purchase money by the plaintiff to the said Emerson and his co-

owners, and received by them respectively under and in pursuance of the sale aforesaid; and that each of the defendants is to be accountable to the plaintiff for his proportion or share of the purchase money so received by him. And the said master is to consider and report what interest the said Emerson and his co-owners ought to pay to the plaintiff upon the sums of the purchase money so received by them respectively; and what equitable allowances and deductions ought to be made to them, or any of them. And the master is further to state the form of a reconveyance to be made by the plaintiff to the said Emerson and his co-owners of their proportions of the said land, when, and so soon as they shall have complied with the decree of this court ultimately to be rendered in the premises.

And the master is to be at full liberty to examine all or any of the parties on oath, touching the premises, and to hear all and any testimony, touching such interest and equitable allowances and deductions, and all and any other matter hereby referred to him by the court.

And after fully hearing the parties, he is to make his report as soon as practicable. And all further orders are reserved until the coming in of the master's report, or the further order of this court.

And it is further ordered and adjudged by the court, that Frederick Hobbs be the master to whom the premises are referred.

MAINE DISTRICT, *ss:*
Circuit court, October term, 1845.

And now, after a full hearing of the motion of the plaintiff's solicitor, opposed by the solicitors' defendants, it is ordered by the court here, that the foregoing decree be received, filed, and passed as of the present term of this court.

Attest: J. MUSSEY, *Clerk.*

DISTRICT OF MAINE, *ss:*
United States circuit court.

JOHN DOGGETT, in equity, complainant,
vs.
WILLIAM EMERSON, AMOS M. ROBERTS, ISAAC FARRAR, AND NORCROSS AND MASON, defendants.

In pursuance of a decretal order of this court, made in the above entitled cause at the last October term thereof, (eighteen hundred and forty-five,) whereby it was referred to the subscriber, one of the masters thereof, to take an account of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them respectively, under and in pursuance of the sale in said decree mentioned; and wherein it was adjudged that each is accountable to the complainant for the proportion or share of the purchase money so received by him; and whereby the master was required to consider and report what interest the said Emerson and his co-owners ought to pay to the complainant upon the sums of the purchase money so received by them respectively, and what equitable allowances and deduc-

tions ought to be made to them, or any of them; and further to state what form of a conveyance should be made by the complainant to said Emerson and his co-owners of their proportions of said land, when and so soon as they shall have complied with the decree of said court ultimately to be rendered in the premises; I, the said master, having been attended by the counsel of the respective parties, and having duly considered the evidence produced by them respectively, and their agreements thereon, do hereby submit the following

Report:

1. The case submitted is one of a rescinded contract. The first question that presents itself is, who were the parties to said contract, and in what proportions did they own the land conveyed to the complainant?

It is insisted on the part of the complainant that each of the four defendants owned one-fourth of the three quarters, which was the subject of refusal given by Emerson, acting in their behalf; while, on the other hand, the defendant Emerson contends that he owned no part of said three quarters: and the defendant Norcross contends that he owned only one-twelfth of three quarters, which one-twelfth he contends was assumed by said Emerson. He alleges that Norcross and Mason sold one-half of their interest in the land, or contract for land, to Moody and Le Breton, who are not parties to the bill. On looking into the original and supplemental bills and the answers thereto, respectively, by Emerson, and the other proceedings in the cause, which is the only proof submitted to the consideration of the master on this point, I am unable to find any evidence that said Emerson was the owner of any part of the three-fourths of the township, one-eighth of which is the subject of the present controversy; and, unless I am bound by the terms of the decree, which seem to assume that said Emerson was a co-owner thereof with the other defendants, I am forced to the conclusion that said Emerson had no interest in said one-eighth, and was no party to the contract rescinded.

It is equally plain that said Norcross and his partner, Mason, were parties to said contract, if, as the decree finds, John Williams was the agent of the owners of and for the sale of their three quarters; but I do not find said Moody and Le Breton to have been parties thereto, as contended for by said Norcross and Mason; and said Norcross and Mason having treated it as a partnership transaction, I find said Norcross and said Mason stand chargeable, jointly and severally, as the owners of one quarter of said township, and are liable in like manner to the complainant, as such parties to said contract, for one-third of the purchase money, as hereinafter stated. And it being conceded that said Roberts and said Farrar were the owners each of one-fourth part of said township, they must be considered as parties to said contract, and chargeable as such respectively. But, with a view to present the question of said Emerson's liability upon the terms of the decree to the decision of the court, I have presented two views of the matter, predicated on the alternatives already suggested in the schedule hereto annexed, marked B.

2. The next question raised by the decree is in what proportions, respectively, are the parties to said contract accountable to the complainant for the purchase money paid by him under and in pursuance of the sale.

Before considering this question, it is necessary to dispose of another which has been made by the counsel for the defendants, as to how much of the purchase money paid by the complainant was actually received by the defendants, all of them contending that in no event are they chargeable for more than one-sixth of ninety thousand dollars, or fifteen thousand dollars, that being the sum at which they gave the refusal of said three quarters of the township to Williams, and ninety thousand dollars being the whole sum actually received by said defendants for said three quarters. But the decree having declared that the sale was made to the complainant by John Williams, as the agent of Emerson and the other co-owners of the land, and not on his own sole account, as the purchase thereof, I do not feel at liberty to adopt the statement or reasoning of the counsel for the defendants on this point. I therefore find, that whatever sum was paid by the complainant to Williams must be deemed and taken to have been paid to him for the benefit of the owners of the land sold; and whether it was in part retained by Williams, as a compensation for his services, or for other consideration existing between him and said owners, I hold, that so far as the complainant is concerned, the defendants must be considered as having received the whole sum paid by the complainant, and are chargeable for the same, as hereinafter stated.

If, then, the said Emerson is considered by the court as not having been a party to said contract, nor to have disposed of any part of his interest in said township of land to the complainant, I find that said Roberts and Farrar, and the firm of Norcross and Mason, are each chargeable and accountable to the complainant for one-third of the sum paid by him as purchase money for one-eighth of said township, which I find to have been the sum of seventeen thousand nine hundred and seven dollars and fifty cents, as is hereinafter stated.

But if, on the other hand, the court shall hold said Emerson to have been a party to said contract, and to have been interested in said land sold to the complainant, then I find said Emerson, Roberts, Farrar, and the firm of Norcross and Mason, each to be liable to the complainant for one-fourth part thereof, as stated in schedule B, which makes part of this report. But if the defendants are not chargeable on the principles of agency, above stated, for the sum of seventeen thousand nine hundred and seven dollars and fifty cents, and are only liable for one-sixth of the sum actually received by them for said three fourths, to wit, the sum of fifteen thousand dollars, then I find said Roberts, Farrar, and Norcross and Mason, or they, with said Emerson, in the alternative already stated, are liable for said fifteen thousand dollars, as stated in schedule B.

But I find that, of the sum of ninety thousand dollars, actually received by said defendants for said three fourths sold by the defendants to

the complainant, and to other persons not parties to the bill, the sum of seventeen thousand nine hundred and seven dollars and fifty cents was in a draft and notes of said complainant, which draft and notes were exhibited to me, and copies of which are returned with this report for the information of the court; the excess of them above seventeen thousand nine hundred and seven dollars and fifty cents, being for interest added to that sum on an adjustment of the payment of the purchase money by the parties.

3. The master is also required by the decree to consider and report what interest the defendants should pay to the complanant on said purchase money.

It is conceded that this does not refer to the rate of interest, but to the time and mode of computation only.

The determination of this question depends, in the opinion of the master, upon the ground on which the sale is rescinded. The original bill is framed with a double aspect, having reference to a case of mutual mistake, and one of fraud and misrepresentation. The decree seems to negative the idea of mistake; and although it does not make use of the words *fraud* or *fraudulent*, in characterizing the transaction on the part of the defendants, yet it is impossible to misunderstand the significant expressions of the court, and to avoid the conclusion that they held it to be a case of *suggestio falsi* or *suppressio veri*, either of which, in a court of equity, is held to be fraudulent; and the contract being rescinded, and the sale held to be a nullity, as I infer, upon the ground of fraud, it seems to me that the computation of interest on the purchase money must commence at the time when it was paid, and not at the time of filing the bill, or of the rescinding of the contract.

The paper given by the complainant for the purchase money being negotiable and payable with interest, I have considered it as so much money; and that the whole purchase money was paid on the eighth day of June, eighteen hundred and thirty-five, the date of said negotiable paper; and, in this view of the law of the case, I find the defendants, respectively, on the principles and in the proportions above stated, to be accountable to the complainant for interest on the principal sum only, and not upon the annual interest paid by the complainant from the time of the payment of the purchase money.

I also find them liable to refund all money paid by the complainant for taxes upon said land, and interest thereon, at six per cent. from the time of said payment.

And I further find, that the complainant is entitled to treat the nett proceeds of the timber taken from the land as payments, from time to time, of so much of the interest accruing on the purchase money; for as said nett proceeds, either singly or united, do not amount at any time to the interest on said purchase money due at the time when said proceeds are received, said proceeds are to be applied from time to time, to keep down the interest on said purchase money.

Upon these principles, I have cast interest on the amount of the purchase money from June 8, 1835, to May 1, 1846, the date of this re-

port, and have deducted the sum of the receipts from the sum of the purchase money and interest, as in schedule A, hereto annexed as part of this report.

4. The fourth subject to which the attention of the master is called by the decree, is the equitable allowances and deductions to be made to the defendants. The complainant is bound to manage the property prudently while in his possession; to use reasonable care and diligence in the sale of the timber, and in the sale of the timber and in the collection of the money; and if any losses have happened in consequence of his negligence, or of the fraud or inattention of his agent, the complainant is justly chargeable with such losses.

The proceeds of lumber taken from the land by the complainant and credited by him, are set forth in the case stated to the master; but I do not adopt the complainant's credits as a just and equitable allowance, in all respects, to the defendants.

The complainant was evidently over-reached by his agent in the sum paid to him for the timber taken off in the winter of 1842–'3, five-ninths of which, the proportion conceded to be correct, are credited by the complainant at the sum of eight hundred and eighty-eight dollars and eighty-nine cents; but it appears satisfactorily to the master, and he accordingly finds, that instead of sixteen hundred dollars received by the complainant for that year, the net proceeds actually received by his agent was nineteen hundred and seventy dollars; and though the defendants claim to charge the complainant with a larger sum for that year, yet, in view of all the circumstances of the case, I am of the opinion that five-ninths of the said sum of nineteen hundred and seventy dollars is all that the defendants are entitled to; but I allow that sum without any deductions for commissions and as so much of the purchase money, or of the interest thereon, refunded on the fifth day of January eighteen hundred and forty-four.

There is no controversy between the parties in regard to the sum to be allowed for the year eighteen hundred and forty-four, and the sum of five hundred eighty-three dollars and ninety-seven cents is accordingly allowed as refunded by the defendants on the twenty-third day of August, eighteen hundred and forty-four, and the sum of two hundred and twenty-nine dollars and eighty-two cents as refunded by them on the sixth January, eighteen hundred forty-five, being the times, respectively, when said sums became due from the purchasers of the logs.

There does not appear to have been any negligence or want of prudence in the sale by the complainant of the logs cut in the winter of eighteen hundred forty-four, five; and although some of the other owners realized one dollar a thousand more than the complainant received for his, it was owing to an accidental circumstance affecting the market in July of that year, which could not have been foreseen by the complainant in March, when he sold his logs, as a witness for the defendants testified, at a fair price. I therefore allow the defendants the sum of twenty-five hundred and eighty-six dollars and fifty-four cents, being five-ninths of the proceeds of logs cut during that winter, as cash refund-

ed on August twentieth, eighteen hundred and forty-five, at which time the payment for them became due. It was contended by the counsel for the defendants, that the money to be received by the complainant for logs cut upon said township the present season, and which it was admitted were cut under an arrangement between the parties and other owners of said township, entered into on the sixth day of September, eighteen hundred and forty-five, and in October of that year, should form a part of the account to be taken under the decree; and that the hearing before the master should be postponed for that purpose; but as it was part of the agreement between the parties that their rights respectively should not be prejudiced thereby, as it appeared from the statement of one of the defendants' counsel, and as serious inconveniences might have resulted to the complainant by a postponement of the hearing till said logs should come to market, or be otherwise disposed of, I did not yield to the wishes of the defendants' counsel, nor consider the evidence on that subject; and as this report must necessarily be recommitted to the master to carry forward the interest account, and from the date of this report to the time of a final decree, I thought all equitable allowances could hereafter be made to the defendants in accordance with the spirit of the arrangement entered into between them and the complainant. And the counsel on both sides acquiescing in the statement of the equitable allowances and deductions made by the master, so far as he has acted on the subject, I have, by request of said counsel, omitted to report, and return the evidence on which the same were made and allowed by me, leaving, for the reasons before stated, the allowances and deductions for the present year for future consideration. Upon the foregoing principles, I find the said defendants, after making all equitable deductions and allowances, except for the winter of eighteen hundred and forty-five, six, are indebted to said complainant in the sum of twenty-five thousand one hundred and fifty-six dollars and twenty-four cents, and that each of the defendants is accountable to the complainants as follows, to wit:

The defendant Roberts, in the sum of - - -	$8,385 42
The defendant Farrar, in the sum of - - -	8,385 41
The defendants Norcross and Mason, in the sum of -	8,385 41

Which said several sums, on the principles already stated, are due from them respectively, as of this first day of May, A. D. eighteen hundred and forty-six, to the complainant for the balance of the purchase money and interest accruing thereon. But if the court should be of the opinion that fifteen thousand dollars is the sum for which the defendants are chargeable as purchase money, then I find said defendants are accountable as follows:

The defendant Roberts in the sum of - - -	$6,770 08
The defendant Farrar in the sum of - - -	6,770 08
The defendants Norcross and Mason in the sum of -	6,770 07

But if the court should be of the opinion that said defendant, Emer-

son, upon the terms of the decree, is to be deemed a party to said contract as owner of one-quarter of the land sold to the complainant, then said sums are to be divided and apportioned, on the same principles, among said Emerson, Roberts, Farrar, and the firm of Norcross and Mason, as in schedule B is set forth.

5. The last subject referred to the master is to state the form of a reconveyance, to be made by the complainant to the said Emerson and his co-owners, of their proportions of said land, on their compliance with the final decree ultimately to be made in the case.

As I find from a careful examination of the proceedings in the cause that said Emerson did not convey, or cause to be conveyed, to the complainant any portion of his interest in said land, it would seem inconsistent with the decree, and improper to require the complainant to convey any part of the same to said Emerson; but it is the opinion of the master that said one-eighth should be reconveyed by the complainant to said Roberts, Farrar, and Norcross and Mason, as tenants in common, by a deed of quit-claim and release, with special covenants of warranty against his own acts, and against the claims and demands of all persons claiming by, through, and under the complainant, and not further nor otherwise.

The counsel for N. G. Norcross appeared before the master and objected to his proceeding with the cause, as said Norcross was about to file a petition for a rehearing thereof, but I overruled the objection. He also moved (the counsel of all other parties objecting) that the master should examine the co-defendants of said Norcross, to wit, Emerson, Roberts, and Farrar, but I overruled the motion. No person appeared before the master as counsel for said Mason, except as he was represented incidentally by the counsel of his partner, Norcross, but who appeared for said Norcross alone.

In coming to these results, I have examined and considered, in addition to the testimony of witnesses touching the equitable allowances and deductions, (the report of which has been waived by the counsel of the several parties,) the proceedings in the cause, and other papers and evidence brought in and used by them respectively, and particularly specified and referred to in schedule C, hereto annexed; and the same, or true copies thereof, being identified by my signature, or otherwise, are herewith returned for the information of the court.

All of which is respectfully submitted.

FREDERICK HOBBS,
Master in Chancery.

May 1, 1846.

Schedule A.

Referred to in the report of the master, and shewing the amount of purchase money paid by the complainant to the defendants, and the interest thereon, and the equitable allowances and deductions therefrom, in accordance with the principles laid down in said report.

Purchase money.

This sum paid June 8, 1835, as purchase money -		$17,907 50
Interest thereon, 10 years, 10 months, 22 days, to May 1, 1846 - - - - - - -		11,705 53
		$29,613 03
Taxes.		
This sum paid for taxes Dec'r 10, 1844 -	$35 06	
Interest thereon, 1 year, 4 months, 20 days, to May 1, 1846 - - - -	2 92	
		37 98
		$29,651 01
Equitable allowances and deductions.		
Five-ninths of receipts for 1842–'3, received by complainant, Jan'y 5, 1844 - -	$1,094 44	
Five-nnths of receipts for 1843–'4, received August 23, 1844 - - - -	583 97	
Ditto for same year, rec'd June 6, 1845 -	229 82	
Five-ninths receipts for 1844–'5, received August 20, 1845 - - - -	2,586 54	
		4,494 77
Balance due - -		$25,156 24

But if the defendants are to be considered as having received only fifteen thousand dollars of complainant as purchase money, then I find the sum due from them to be as follows, to wit:

This sum paid June 8, 1835 - - - - -	$15,000 00
Interest on the same, 10 years, 10 months, 22 days -	9,805 00
	$24,805 00
From which is to be taken the equitable allowances and deductions as herein before stated - - -	4,494 77
Balance - - - -	$20,310 23

Schedule B.

In the alternative, as stated in this report, shewing the proportions for which the defendants respectively are chargeable under the decree.

1. If said defendants, Roberts, Farrar, and the firm of Norcross & Mason, are accountable to the complainant, then the sum due from them, severally, as ascertained by schedule A, is as follows:

The said Roberts is chargeable for the sum of - -	$8,385 42
The said Farrar is chargeable for the sum of - -	8,385 42
The said Norcross & Mason are, jointly and severally, chargeable for the sum of - - - -	8,385 41
	$25,156 24

2. But if said Emerson is to be deemed a party to said contract, and accountable to the complainant, then the defendants are respectively chargeable as follows:

The said Emerson is chargeable in the sum of - -	$6,289 06
The said Roberts is chargeable in the sum of - -	6,289 06
The said Farrar is chargeable in the sum of - -	6,289 06
The said Norcross & Mason are, jointly and severally, chargeable for the sum of - - - -	6,289 06
	$25,156 24

3. If, on the other hand, the sum of fifteen thousand dollars is to be taken as the sum of the purchase money for which the said defendants are chargeable, then I find, in the alternative already stated, that said defendants are chargeable as follows:

The sum to be distributed is $20,310 23; and, if said Emerson is not to be considered a party—

Said defendant Roberts is chargeable for - -	$6,770 08
Said defendant Farrar is chargeable for - -	6,770 08
Said defendants Norcross & Mason are, jointly and severally, chargeable for - - - -	6,770 07
	$20,310 23

Or, if said Emerson is deemed a party, as already stated, said—

Emerson is chargeable for - - - -	$5,077 56
Roberts is chargeable for - - - -	5,077 56
Farrar is chargeable for - - - -	5,077 56
Norcross & Mason, as above, for - - -	5,077 55
	$20,310 23

Schedule C.

The following evidence and papers were brought in and used by the parties respectively, and were considered by the master, and are returned for the information of the court.

On the part of the complainant.

1. A state of facts in form of an account.
2. The proceedings in the cause as contained in a printed volume and two pamphlets.

3. The depositions of George R. Dinsmore and James Reed.
4. A draft and two promissory notes, copies of which are returned.

On the part of the defendants Emerson, Roberts, and Farrar.

1. The proceedings in the cause, as contained in a printed volume and two printed pamphlets.
2. Memorandum of agreement, dated Dec'r 1, 1843.
3. " " " Jan. 11, 1844.
4. " " " July 24, 1844.
5. " " " Sept. 17, 1844.
6. Copy of ditto " " Sept. 6, 1845.
7. " " " October, 1845.

On the part of the defendants Norcross and Mason.

1. Protest against the master's proceedings in the cause.
2. Motion and affidavit for a continuance.
3. State of facts.
4. The proceedings in the cause, as contained in a printed volume and two printed pamphlets.
5. Motion for the examination of the co-defendants of said Norcross.
6. Oral examination of the complainant.

FRED. HOBBS, *Master.*

State of facts.

JOHN DOGGETT, plaintiff in equity,
vs.
WILLIAM EMMERSON & ALS.

Before F. Hobbs, esq., master.

Claim of the plaintiff in equity against the defendants under the decree.

1. Amount paid on draft of plaintiff, on John Doggett & Co., payable to John Williams, or order, date June 8, 1835, for $6,031 84, payable in sixty days from date, viz: - - - - -	$6,031 84	
Interest on same - - - - -		
2. Amount paid on note of John Doggett & Co., dated June 8, 1835, for $5,969 16, payable to William Emerson, or order, in one year, and interest annually, viz: - - - - - -	5,969 16	
Interest on same for one year - - - -	358 15	
Interest on above sums - - - - -		
3. One year's interest on note of John Doggett & Co., payable to William Emerson, or order, for $5,969 16, dated June 8, 1835, and payable in two years from date, with interest annually, viz: - -		
Interest on same - - - - -	358 14	

4. Amount paid on note before described, dated June 8, 1835, and payable in two years, with interest annually, viz:	5,969 16
One year's interest on same	358 14
Interest on above sums	
5. Amount paid for taxes on one-eighth of township No. 3, range 13, purchased of defendants, viz:	35 06
Interest on same	

And he gives credit for the following sums, viz:

1. By $\frac{5}{9}$ of amount received for sale of logs by Samuel Smith, Dec'r 18, 1843, viz:	$888 89
Interest on same	
2. By $\frac{5}{9}$ of amount received for sale of logs to G. W. Pickering, Aug. 23, 1844, viz:	583 97
Interest on same	
3. By $\frac{5}{9}$ of amount received from Isaac Farrar, for sale of logs, January 6, 1845, viz:	229 82
Interest on same	
4. By $\frac{5}{9}$ of amount received for sale of logs to G. W. Pickering, September 19, 1845, viz:	2,586 54
Interest on same	

JOHN DOGGETT,
By WILLIS & FESSENDEN,
His solicitors.

FRED. HOBBS, *Master.*

I, James Reed, of Boston, aged fifty-six years, on oath testify and say: That, on the first of February, eighteen hundred and thirty-six, the firm of James Reed & Co., of which he was a member, purchased of Amos M. Roberts, of Bangor, the following notes, signed by John Doggett, or John Doggett & Co., of Boston, viz: One note dated June eighth, eighteen hundred and thirty-five, payable in twelve months, with interest annually, for $5,969 16. One other note of the same date, payable in the same time, with interest annually, for $4,775 00. One other note of the same date, payable in twenty-four months, with interest annually, for $4,775 00. Mr. Roberts was paid for said notes by fifty shares in the stock of the Eastern Bank of Bangor, the par value of which was $5,000 00, and by James Reed & Co., note at three months, payable to Amos M. Roberts, for $9,689 82, which note was paid in cash at maturity.

In April, 1836, I purchased of Grant, Seaver & Co., of Boston, a note signed by John Dogget & Co. dated June 8, 1835, payable in two years, with interest annually, for $5,969 16. All the foregoing notes were paid by John Doggett & Co. to James Reed & Co., with interest annually, according to the tenor of the notes, at sundry times during the year 1837; the last payment was made in December, 1837.

Question by W. P. Preble, counsel for the defendant. Was any dis-

count or abatement made by you or your firm to Doggett & Co., on said notes, when said notes were taken up, or at any time; and, if so, how much?

Answer. No discount was made at any time. Doggett & Co. paid us the full amount of said notes and interest annually, according to the tenor of said notes.

Question by same. In what manner were said notes paid, in cash or in some other mode? Please to state particularly.

Answer. They were paid in cash, and all paid in the year 1837, as before stated.

JAMES READ.

FRED. HOBBS, *Master.*

UNITED STATES OF AMERICA, *district of Maine, ss:*

On the twenty-fourth day of March, A. D. 1846, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition aforesaid, by him subscribed. Taken at the request of John Doggett, and to be used in a case in chancery now pending between him and William Emerson and al., in the circuit court of the United States, and to be heard before Frederick Hobbs, esq., master in chancery. The adverse party were present by the hon. William P. Preble, their counsel. The deponent, living in Boston, more than one hundred miles from the place of trial, is the cause of taking this deposition.

S. LONGFELLOW,
Commissioner and master in chancery.

I, George R. Dinsmore, of Boston, aged forty years, on oath testify and say: That, June 26, 1835, I purchased a note of A. M. Roberts against John Doggett & Co., of Boston, dated Bangor, June 8th, 1835, and payable in two years, with interest annually. Said note was secured by mortgage deed to William Emerson and A. M. Roberts, and which was to be assigned for the benefit of Grant, Seaver & Co., the purchasers of the note, and was for the sum of five thousand nine hundred and sixty-nine dollars and sixteen cents.

Question by Fessenden & Deblois, counsel for John Doggett. What did you do with that note?

Answer. It was sold to James Reed & Co., April 11, 1836. The following is a copy of the entry on the books of Grant, Seaver & Co., made at or about the time of the transaction, viz:

June 26, 1835.—Notes receivable Dr. to Cash. Paid A. M. Roberts, for John Doggett & Co., note dated Bangor, June 8, 1835, and payable in two years, with interest annually, said note secured by mortgage deed to William Emerson and A. M. Roberts. Mortgage to be assigned for our security, $5,969 16.

Question by same. Will you please to state in what manner you paid A. M. Roberts for said note?

Answer. It appears by our books that, under date of June 26, 1835, is the following entry, viz: Received for Brown farm and Essex street

lot, in Bangor, sold to A. M. Roberts this day, $3,469 16. Received for A. M. Roberts' note, due February 6 and 9, 1836, $2,500. That is the way in which said Roberts was paid for said note.

Question. W. P. Preble, counsel for the defendants.

GEO. R. DINSMOOR.

FRED. HOBBS, *Master.*

UNITED STATES OF AMERICA, *district of Maine, ss:*

On the twenty-fourth day of March, in the year of our Lord eighteen hundred and forty-six, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition aforesaid by him subscribed. Taken at the request of John Doggett, and to be used in a case in chancery now pending between him and William Emerson and al., in the circuit court of the United States, and to be heard before Frederick Hobbs, esq., master in chancery. The adverse party were present by the hon. William P. Preble, their counsel. The deponent living in Boston, more than one hundred miles from the place of trial, is the cause of taking this deposition.

S. LONGFELLOW,
Commissioner and master in chancery.

Copies of a draft and two promissory notes, exhibited to the master by the complainant:

$6,031 84. BANGOR, *June* 8, 1835.

Sixty days from date, value received, please pay to the order of John Williams, at Suffolk Bank, Boston, six thousand thirty-one dollars $\frac{84}{100}$, on account of, and oblige your obedient servant,

JOHN DOGGETT.

JOHN DOGGETT & Co., *Merchants, Boston.*

Accepted, and marked paid. JOHN DOGGETT & Co.

Endorsed in blank—

JOHN WILLIAMS.
A. M. ROBERTS.

$5,969 16. BANGOR, *June* 8, 1835.

Value received, I promise to pay to William Emerson, or order, five thousand nine hundred and sixty-nine dollars $\frac{16}{100}$, in one year, with interest annually.

No. 2259. JOHN DOGGETT & Co.

Endorsed: Without recourse. WM. EMERSON.
Without recourse- A. M. ROBERTS.

5,969 16. BANGOR, *June* 8, 1835.

Value received, I promise to pay William Emerson, or order, five thousand nine hundred sixty-nine dollars $\frac{16}{100}$, in two years, and interest annually.

JOHN DOGGETT & Co.

N. R. Due June 8—11, 1837.
Endorsed: Without recourse. WM. EMERSON.
FRED. HOBBS, *Master.*

This memorandum of an agreement, made this first day of December, A. D. 1843, by and between William Emerson, agent of Samuel Farrar and Samuel P. Strickland, Isaac Farrar, Amos M. Roberts, and Leonard Jones, all of Bangor, county of Penobscot, and State of Maine, and John Doggett, of Boston, county of Suffolk, State of Massachusetts, of the one part, and Luther E. Comins, of Eddington, in said county of Penobscot, on the other part, witnesseth: That said Emerson, Farrar, Roberts, Jones, and Doggett, on their part, for the consideration hereafter expressed, hereby grant to said Comins permission to enter upon the several lots, numbered sixteen, seventeen, twenty-one, twenty-two, twenty-three, twenty-seven, twenty-eight, twenty-nine, and thirty, in township numbered three, in the thirteenth range of townships west, from the east line of said State of Maine, and there to cut down and transport therefrom such pine timber trees as they may think fit and proper during the ensuing season for logging. And the said Emerson, agent for said S. Farrar and S. P. Strickland, agrees to pay fifteen-fortieths, said Isaac Farrar eleven-fortieths, said Roberts and Jones five-fortieths, and said John Doggett nine-fortieths, of the following charges, that is, they agree that they will appoint some suitable person to survey and scale said timber, and pay the wages of the person by them appointed; and they further agree to pay three-fourths of the toll at the dam erected by Veazie, and three-fourths of the toll at the dam erected by Gilman and others; and they agree to pay one-half of the toll at Veazie's boom; and they further agree to pay said Comings to take said logs from Veazie's boom and to saw the same into boards and other required dimensions, and to deliver said lumber to them at Bangor, two dollars and fifty cents per thousand feet for the one-half of all said lumber so delivered.

And the said Luther E. Comins, on his part, hereby agrees, that he will in due season enter upon the aforementioned lots, and employ thereon during said coming season for logging, a good six-ox team, and a sufficient number of men in cutting and transporting therefrom the timber aforesaid; that he will haul all such logs from the trees they may cut which will average equal to number four boards, Bangor survey; that he will deliver to said Emerson, Farrar, Roberts, Jones and Doggett, one-half in quality and quantity in boards, or other required lumber, at Bangor, of all the lumber which may be sawed from the trees so cut; that he will make use of his best skill and judgment in cutting, hauling, and running said timber; that there shall be no neglect in getting the logs down river to Veazie's boom; that he will take the logs from Veazie's boom and saw them in a workmanlike manner into boards and plank, or any other dimensions required by the proprietors, and deliver the one-half to said Emerson, Farrar, Roberts, Jones and Doggett, at Bangor.

Should there be any part of the logs which cannot be got down the first year, he agrees to improve the first opportunity to get them down, and deliver the one-half of the boards, or other required lumber from them, until they are all down and sawed, and the one-half delivered; that he will furnish and provide board for the said scaler, while in said employ, scaling said logs at his own expense; that he will give due notice to said Emerson and others, or their agent appointed to scale the same, at what time and place the timber cut by him shall be deposited and ready for inspection and survey, and will give information of all the marks and the number of logs by them cut; and in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity and manner of cutting. Said Comins further agrees that all the right, interest and property, in all the lumber cut as aforesaid, shall be and remain in said Emerson, Farrar, Roberts, Jones and Doggett, until he shall have fully performed his several agreements aforesaid.

In witness whereof, the said parties have, to this and one other instrument of the same tenor and date, set their hands the day and year first written.

LUTHER E. COMINS,
WILLIAM EMERSON,
ISAAC FARRAR,
A. M. ROBERTS,
LEONARD JONES,
JOHN DOGGETT.

FRED. HOBBS, *Master.*

This memorandum of an agreement made this eleventh day of January, A. D. 1844, by and between William Emerson, Isaac Farrar, Amos M. Roberts and Leonard Jones, all of Bangor, county of Penobscot, State of Maine, and John Doggett of Boston, county of Suffolk, State of Massachusetts, on the one part, and Samuel P. Strickland, Hastings Strickland and Hezekiah Winslow, all of Bangor aforesaid, on the other part, witnesseth: that said Emerson, Farrar, Roberts, Jones, and Doggett, for the consideration hereinafter expressed, on their part, do hereby grant to said Strickland, Strickland and Winslow, permission to enter, for the present lumbering season only, with one or more teams, upon township number three, in the thirteenth range of townships west from the east line of the State of Maine, and there to cut and haul into "Ragged lake" all such pine trees as they may think fit and proper; not however to interfere, in any way, with any team or teams which said Emerson, Farrar, Roberts, Jones and Doggett, may have allowed to go on to said township the present logging season. And they further agree to appoint some suitable person to scale said lumber and to pay the wages of the scaler, said Strickland, Strickland and Winslow to pay his board.

And said Strickland, Strickland and Winslow, on their part, agree to employ on said township one or more teams the present lumbering sea-

son; that they will not, in any way, interfere with any other team permitted by said proprietors; that they will cut said lumber in a prudent and judicious manner, and haul all logs from such trees as they may cut that will average equal to number four boards; that they will give a true account to the scaler of the marks of all logs so cut, and where they may be found; and that they will use all due diligence in driving the logs into Penobscot boom.

And they further agree to deliver to said Emerson, Farrar, Roberts, Jones, and Doggett, or their agent, in the Penobscot boom, free of all expense to said proprietors of the town, one-half in quantity and quality of all lumber cut under this permit. Should the lumber not all come down the first year, they agree to improve the first opportunity to drive said logs, and deliver the one-half until the logs are all down, and the one-half delivered. A true and accurate account of the number of feet in each log shall be kept by the scaler, which shall be conclusive as to the quantity. And said Strickland, Strickland and Winslow, further agree, that all the lumber cut under this permit shall be and remain the property of said Emerson, Farrar, Roberts, Jones and Doggett, until all the conditions are fulfilled on the part of said Stricklands and Winslow.

In witness whereof, the parties have hereunto set their hands to this and one other instrument of the like tenor and date, the day and year above written.

A. M. ROBERTS,
LEONARD JONES,
WM. EMERSON,
ISAAC FARRAR,
JOHN DOGGETT,
STRICKLANDS & WINSLOW.

Witness to signatures of A. M. Roberts & L. Jones—
JOHN PATTEN.

Witness to the signatures of Wm. Emerson & Isaac Farrar—
J. WYMAN.

Witness to the signature of John Doggett—
J. W. RICHARDSON.

Witness to signature of Stricklands & Winslow—
JOHN PATTEN.

FRED. HOBBS, *Master.*

This memorandum of an agreement, made this twenty-fourth day of July, A. D. 1844, by and between William Emerson, Isaac Farrar, Amos M. Roberts and Leonard Jones, all of Bangor, and John Doggett, of Boston, on the one part, and William H. Smith, of Old Town, on the other part, witnesseth: that said Emerson, Farrar, Roberts, Jones, and Doggett, for the consideration hereinafter expressed, on their part, do hereby grant to said Smith permission to enter for the ensuing winter, (lumbering season only,) with three teams or more, upon township number three, in the thirteenth range of townships west from the

east line of the State of Maine, and there to cut and haul into Pine stream, from lots numbered one, two, three, seven, eight, thirteen, fourteen, nineteen, twenty, twenty-five, twenty-six, thirty-one, thirty-two, and the west half of nine and fifteen, all such pine trees as he may think fit and proper; and they further agree to appoint some suitable person to scale said lumber, and to pay the wages of the scaler; said Smith to pay his board.

And said Smith, on his part, agrees to clear Pine stream, from the north line of the town to Pine pond, and to build a good and sufficient number of dams to make easy and convenient to transport the timber which may be hauled into said Pine stream; the dams to be well built, stones, bushes, and other obstructions to be removed, so far as to make it easy to run logs from Pine pond. And said Smith does agree to employ, on the aforenamed lots in said township, three or more teams, with a sufficient number of hands, the ensuing lumbering season, and that he will cut and haul into Pine stream, and transport the same into the Penobscot boom, all such trees as he may see fit to select from said lots; but that he will cut said lumber in a prudent and judicious manner, and will haul all logs from such trees as he may cut which will average equal to number four boards; that he will mark all the logs cut under this permit with the same mark, and give a true account to the scaler of all the logs and mark, and where they may be found; and in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity. And he further agrees to use all due diligence in driving the logs into the Penobscot boom, and that he will deliver to said Emerson, Farrar, Roberts, Jones and Doggett, or to their agent in the Penobscot boom, free of all expense to said proprietors of said township, one-half in quantity and quality of all lumber which may be driven into said boom, in each year, that may be cut under this permit.

Should the lumber not all come down the first year, he agrees to improve the first opportunity to drive what may remain of the first year, and deliver the one-half until the logs are all down, and the one-half delivered.

And said Smith further agrees, that all the lumber cut under this permit, shall be and remain the property of said Emerson, Farrar, Roberts, Jones, and Doggett, until all the conditions of this permit are fulfilled on his part.

In witness whereof, the parties have hereunto set their hands to this, and one other instrument of like tenor and date, the day and year aforewritten.

Theodore H. Dillingham, witness to the signature of Wm. H. Smith.

WM. H. SMITH,
WM. EMERSON,
ISAAC FARRAR,
A. M. ROBERTS,
LEONARD JONES,
JOHN DOGGETT.

Samuel Doggett, witness to the signature of John Doggett.

FRED. HOBBS, *Master*.

This memorandum of an agreement, made this seventeenth day of September, A. D. 1844, by and between William Emerson, agent for Samuel Farrar and Samuel P. Strickland, Isaac Farrar, Amos M. Roberts, and Leonard Jones, all of Bangor, county of Penobscot, and State of Maine, and John Doggett, of Boston, county of Suffolk, State of Massachusetts, on the one part, and Luther E. Comins, of Eddington, in said county of Penobscot, on the other part, witnesseth: That said Emerson, Farrar, Roberts, Jones, and Doggett, on their part, for the consideration hereafter expressed, hereby grant to said Comins permission to enter upon the several lots numbered sixteen, seventeen, twenty-one, twenty-two, twenty-three, twenty-seven, twenty-eight, twenty-nine, thirty, eighteen, ten, eleven, twelve, four, five, six, and half of Nos. nine and fifteen, next to Dead Pond, in township numbered three, in the thirteenth range of townships west from the east line of said State of Maine, and there to cut down, and transport therefrom, such pine timber trees as he may think fit and proper, during the ensuing season for logging. And the said Emerson, agent for said S. Farrar and S. P. Strickland, agrees to pay fifteen fortieths, said Isaac Farrar eleven fortieths, said Roberts and Jones five fortieths, and said John Doggett nine fortieths, of the following charges, that is, they will appoint some suitable person to survey and scale said timber, and pay the wages of the person by them appointed; and they further agree to pay three-fourths of the toll at the dam erected by Gilman and others, and three-fourths of the toll at the dam erected by Veazie. And the said Luther E. Comins on his part hereby agrees, that he will in due season enter upon the aforementioned lots, and employ thereon, during said coming season for logging, equal to two good six-ox teams, or more, and a sufficient number of men in cutting and transporting these from the timber aforesaid; that he will haul all such logs from the trees he may cut which will average equal to number four boards, Bangor survey; that he will deliver to said Emerson, Farrar, Roberts, Jones, and Doggett, one-half in quality and quantity of all logs cut, at Veazie boom; that he will make use of his best skill and judgment in cutting, hauling, and running said logs, and that there shall be no neglect in getting the logs down river to Veazie boom. Should there be any part of the logs which cannot be got down the first year, he agrees to improve the first opportunity to get them down, and deliver one-half of them at Veazie boom until they are all down; that he will furnish and provide board for the said scaler while in said employ scaling said logs, at his own expense; that he will give due notice to said Emerson and others, or their agent appointed to scale the same, at what time and place the timber cut by him shall be deposited, and ready for inspection and survey; and will give information of all the marks and the number of logs by them cut; and, in case of failing to do so, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive, as to the quantity and manner of cutting. Said Comins further agrees, that all the right, interest, and property, in all the lumber cut as aforesaid, shall be and remain in said Emerson, Far-

rar, Roberts, Jones, and Doggett, until he shall have fully performed his several agreements aforesaid.

In witness whereof, the said parties have to this, and one other instrument of the same tenor and date, set their hands, the day and year first written.

WILLIAM EMERSON,
ISAAC FARRAR,
LEONARD JONES,
Witness to signature of John Doggett, } JOHN DOGGETT,
Jona. T. Williams. } A. M. ROBERTS,
LUTHER E. COMINS.

FRED. HOBBS, *Master*.

This memorandum of an agreement, made this day of October, A. D. 1845, by and between William Emerson, agent for Samuel Farrar and Samuel P. Strickland, Isaac Farrar, Amos M. Roberts, and Leonard Jones, all of Bangor, county of Penobscot, and State of Maine, and John Doggett, of Boston, county of Suffolk, State of Massachusetts, on the one part, and Samuel P. Strickland, Hastings Strickland, Hezekiah Winslow, and Aaron Babb, all of Bangor, county of Penobscot, and State of Maine, on the other part, witnesseth:

That the said Emerson, Farrar, Roberts, Jones, and Doggett, on their part, for the consideration hereafter expressed, hereby grant to said Winslow, Stricklands, and Babb, permission to enter upon the east half of lot numbered fifteen, and all lots numbered twenty-one, twenty-two, twenty-seven, twenty-eight, and twenty-nine, in township numbered three, in the thirteenth range of townships west from the east line of said State of Maine, and there to cut down, and transport therefrom, such pine timber trees as they may think fit and proper, during the ensuing season for logging. And the said Emerson, agent for said Farrar and S. P. Strickland, agrees to pay fifteen fortieths, said Isaac Farrar eleven fortieths, said Roberts and Jones five fortieths, and said John Doggett nine fortieths, of the following charges; that is, they will appoint some suitable person to survey and scale said timber, and pay the wages of the person by them appointed. And they further agree to pay one-half of the toll at the dam erected by Gilman and others, and one-half of the toll at the dam erected by Veazie. And the said Stricklands, Winslow, and Babb, on their part, agree that they will, in due season the coming winter, go on to said lots with two good six ox teams, and a sufficient number of men, and transport timber therefrom, and continue on said lots during the logging season. That they will haul all such logs from the trees they may cut which will average equal to number four boards, Bangor survey; that they will deliver to said Emerson, Farrar, Roberts, Jones, and Doggett, one-half in quality and quantity of all logs cut, at Veazie's boom; that they will make use of their best skill and judgment in cutting, hauling, and running said logs; and there shall be no neglect in getting said logs down river to Veazie boom. Should there be any part of the logs which cannot be got down the

first year, they agree to improve the first opportunity to get them down, and deliver one-half of them at Veazie boom, until they are all down. That they will furnish and provide board for the said scaler, while employed in scaling said logs, at their own expense; that they will give due notice to said Emerson and others, or their agent appointed to scale the same, at what time and place the timber cut by them shall be deposited, and ready for inspection and survey; and will give information of all the marks and the number of logs by them cut; and, in case of failing so to do, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive, as to the quantity and manner of cutting.

And the said Stricklands, Winslow, and Babb, further agree, that all the right, and interest, and property, in all the lumber cut as aforesaid, shall be and remain in said Emerson, Farrar, Roberts, Jones, and Doggett, until they shall have fully performed their several agreements aforesaid.

In witness whereof, the parties have to this, and one other instrument of the same tenor and date, set their hands, the day and year first written.

It is further agreed, by said Stricklands, Winslow, and Babb, that all the logs shall be marked as fast as they are hauled on to the landings.

WM. EMERSON,
ISAAC FARRAR,
A. M. ROBERTS,
LEONARD JONES,
STRICKLANDS & WINSLOW,
AARON BABB,
JOHN DOGGETT.

FRED. HOBBS, *Master.*

This memorandum of an agreement, made this sixth day of September, A. D. 1845, by and between William Emerson, Isaac Farrar, Amos M. Roberts, and Leonard Jones, all of Bangor, and John Doggett, of Boston, on the one part, and N. H. Dillingham & Co., all of Bangor, on the other part, witnesseth:

That said Emerson, Farrar, Roberts, Jones, and Doggett, for the consideration hereinafter expressed, on their part, do hereby grant to N. H. Dillingham & Co., permission to enter, for the ensuing winter lumbering season only, with three teams or more upon township number three, in the thirteenth range of townships west from the east line of the State of Maine, and there to cut and haul into Pine stream, from lots numbered one, two, three, seven, eight, thirteen, fourteen, nineteen, twenty, twenty-five, twenty-six, thirty-one, thirty-two, and the west half of nine and fifteen, all such pine trees as they may think fit and proper. And they further agree to appoint some suitable person to scale said timber, and to pay the wages of the scaler; said N. H. Dillingham & Co. to pay his board.

Said N. H. Dillingham & Co., on their part, do agree to employ on

the aforementioned lots in said township, three or more good six-ox teams, with a sufficient number of hands during the ensuing lumbering season, and that they will cut and haul into Pine stream, and transport the same into the Penobscot boom, all such trees as they may see fit to select from said lots, but that they will cut said lumber in a prudent and judicious manner, and will haul all logs from such trees as they may cut which will average equal to number four boards; that they will mark all the logs cut under this permit with the same mark, and give a true account to the scaler of all the logs and mark, and where they may be found; and in case of failing to do so, the scaler, by the best way and means in his power, shall estimate the amount of timber cut, and his decision shall be conclusive as to the quantity. And they further agree to use all due diligence in driving the logs into the Penobscot boom, and that they will deliver to said Emerson, Farrar, Roberts, Jones, and Doggett, or to their agent in the Penobscot boom, free of all expense to said proprietors of said township, one half in quantity and quality of all lumber which may be driven into said boom in each year that may be cut under this permit.

Should the lumber not all come down the first year, they agree to improve the first opportunity to drive what may remain of the first year, and deliver the one half until the logs are all down, and the one half delivered. And they further agree to pay said Emerson, Farrar, Roberts, Jones, and Doggett, a bonus of eight hundred dollars in addition to one half the logs aforesaid; said eight hundred dollars to be paid in sixty days after the first drive shall be made from the aforesaid logs into the Penobscot boom. And they further agree that they will not transfer this permit to any other person or persons to log from the premises, nor permit any logs from any other township to be landed in the said Pine stream, within the limits of this permit, without first obtaining the consent in writing from all interested in it. And the said N. H. Dillingham & Co. further agree that all the lumber cut under this permit shall remain the property of said Emerson, Farrar, Roberts, Jones, and Doggett, until all the conditions of this permit are fulfilled on their part.

In witness whereof, the parties have hereunto set their hands to this and to one other instrument of like tenor and date, the day and year aforewritten.

JOHN DOGGETT,
N. H. DILLINGHAM & CO.,
WILLIAM EMERSON,
ISAAC FARRAR,
A. M. ROBERTS,
LEONARD JONES.

FRED. HOBBS, *Master*.

Circuit court of the United States for the first circuit and district of Maine:

Between John Doggett, complainant, and William Emerson, Amos M. Roberts, Isaac Farrar, Joseph W. Mason, and Nicholas G. Norcross.

To Frederick Hobbs, esq., and a master in chancery.

Nicholas G. Norcross, one of the defendants above named, represents: That in the above cause the hon. justices of said circuit court have pronounced a decision, and certain matters arising therefrom have been referred to said master, as mentioned in the commission of said master; that said master has appointed the twenty-fifth day of March for a hearing, touching the matters aforesaid. The said Nicholas G. Norcross has made his petition to the hon. justices of said circuit court, stating as therein stated, and, among other things, that he has a full defence to said Doggett bill of complaint; that by a mistake between persons employed by him and J. S. Rowe, esq., one of the counsellors of this court, the said defence was not insisted upon and plead before the decision of said court was pronounced; that said Norcross has prayed the said hon. to allow him to file a supplemental bill in nature of a bill for rehearing, that he may have an opportunity to make and insist upon his said defence, the same as he might have made had no such mistake been made; that said Norcross protests that he has defence to said bill of complaint of said Doggett, that he believes he is no wise interested in the hearing before the master, but being advised that he may safely appear under this protest, he has determined, and does under protest, that he has such perfect defence to said suit; that his said defence is, that after the filing of said original bill, and after the filing of answers, and after the taking of testimony or a part of it, he in due form of law obtained a decree discharging him from all of his debts under the act of Congress, entitled an act to establish a uniform system of bankruptcy throughout the United States, and obtained a certificate of said decree and discharge in due form of law.

NICHOLAS G. NORCROSS,
By WM. H. McCRILLIS,
His solicitor.

March 25, 1846.
FRED. HOBBS, *Master.*

Circuit court United States, first circuit.

JOHN DOGGETT, in equity, complainant, against WILLIAM EMERSON, Amos M. Roberts, Isaac Farrar, Nicholas G. Norcross, and Joseph W. Mason. } In chancery.

I, William H. McCrillis, on oath depose and say, that I am counsel for Nicholas G. Norcross, one of the defendants in the above entitled cause; that this deponent believes that his presence would materially aid him in

conducting said cause for his client; that this deponent fully believes that the said Norcross is now detained by unexpected business of the highest importance, and which requires his personal presence, and which he did not and could not have foreseen at the time of the appointment of this hearing; that said Norcross has and is interested in a large quantity of logs on the Merrimack river, and which are now in such condition that he could not leave them without an enormous pecuniary sacrifice.

That your deponent fully believes that it is of the highest importance to the defence of said Norcross that a full and thorough investigation should be had of all the facts pertinent in this hearing; that such full investigation can only be had when the other defendants are present before this hon. court and are examined; that this deponent understood from their counsel, J. S. Rowe, that they were to be here; that he understood from both J. P. Rogers and said Roberts that the hearing would be at Boston where said Roberts was, and that said Roberts would be present.

That said deponent has been instructed by his client, that William H. Mills, of Bangor, if present, would testify that said Roberts received said John Doggett & Co.'s notes and drafts, or a part of them, in payment of his said quarter of the township named in said bill of complaint; that your deponent did not have him present, believing that said Roberts would be present and examined, and would testify that he did receive said notes and drafts in payment of his said quarter, and that said Norcross received no part or portion. That your deponent, until the second hearing before the court, had no notice; that your deponent objected to proceedings, and also objected to the early time named for the present hearing, but was assured by this hon. court that full opportunity and a full hearing of the parties would be given, and which your deponent believes the importance of the cause and just rights of his client imperiously require.

WM. H. McCRILLIS.

STATE OF MAINE, *Cumberland, ss:*

March 28, 1846.

Personally appeared William H. McCrillis, and made oath that the foregoing affidavit by him signed is wholly true.

SAMUEL FESSENDEN,
Justice of the Peace.

FRED. HOBBS, *master.*

DISTRICT OF MAINE, *ss:*

JOHN DOGGETT, in equity,
vs.
WM. EMERSON and als.

State of facts presented on behalf of Norcross and Mason, two of the respondents.

That William Emerson, named in the bill and answers, in giving the

written refusal to John Williams, (who is named in the decree of the court,) professed to act on his sole account, and not on account of, or as agent of, others; and that the complainant negotiated the contract of purchase of one-eighth of said township, not knowing that said Norcross and Mason had any interest in the same; and that said Emerson gave the written refusal, and made the oral and written representations, (if any such were made,) and concealed the number of acres of land from the complainant, and made the verbal agreement with John Williams, different from the written refusal aforesaid, without the knowledge, consent, or authority, of Norcross and Mason, or either of them.

That the only authority which said Emerson had from Norcross and Mason was the authority to sell their interest in the land, with the interest of all of the other owners, at a sum not less than one hundred and twenty thousand dollars for the whole township; and that John Williams had no authority from said Norcross and Mason for any of his acts or conduct, in the selling the land to the complainant.

Therefore the defendants, Norcross and Mason, claim that neither in law, nor within the meaning of the decree of the court, was said Williams the agent of Norcross and Mason, or either of them, unless said Norcross and Mason adopted the acts of said Williams and Emerson, or in some way recognised or confirmed them, by receiving some share of the purchase money of the complainant under or in pursuance of the said sale.

That the said Norcross and Mason deny that confirmed, recognised, or in way received any portion of the purchase money of the plaintiff, in pursuance of said sale or otherwise; but affirm that their original interest in said township, by virtue of the contract with the land agent of the State of Maine, was one quarter part of the township; that William Emerson, Isaac Farrar, and Amos M. Roberts, were each interested in a like quantity, and for which the said State of Maine held the joint notes of all for about forty-three thousand dollars; and that prior to authority given to said Emerson to sell said land at a sum not less than one hundred and twenty thousand dollars, and prior to the giving of said written refusal by said Emerson to said Williams, they, the said Norcross and Mason, had sold and transferred to Messrs. Moody and Le Breton *one* one-half part of said Norcross and Mason's quarter part of said township, and received their pay for the same; that the said Moody and Le Breton authorized said Emerson to sell their interest in the township, with the interest of all the other owners of said township, at a rate not less than one hundred and twenty thousand dollars for the whole township; that immediately after said Emerson received the purchase money of John Williams for the one-eighth of said township sold said Doggett, the said Moody and Le Breton repudiated and disavowed the conduct and acts of said Emerson, and all others, in the sale of said land to said complainant; whereupon said William Emerson, for himself, assumed their interest in said land, and gave said Moody and Le Breton his own individual notes for the same, at the

rate of ninety thousand dollars for three quarters of said township, and less the sum of nine hundred fourteen dollars and forty-seven cents.

Therefore, the said Norcross and Mason claim, that they were not owners of the one-half part of one quarter of said township sold by them to said Moody and Le Breton, nor are they to be deemed or holden, or to have received in pursuance of said sale to the complainant, or as their proportion or share of the purchase money, any part of the same which was received for said Moody and Le Breton's portion of said land; or any part or proportion received as aforesaid by said Moody and Le Breon in the individual notes of said Emerson, or otherwise.

The said Norcross and Mason further contend and claim, that immediately after said Emerson received from John Williams the purchase money for one-eighth of said township sold to the complainant, that said William Emerson assumed their interest in the original purchase, and the considerations received from said complainant, and gave the said Norcross and Mason his individual notes for their one-eighth of said township, deducting therefrom the sum of nine hundred fourteen dollars and forty-seven cents.

That said Norcross and Mason did not receive any of the purchase money of the complainant, because they were dissatisfied with the conduct and acts of said Emerson. Therefore the said Norcross and Mason contend, that they have never received any of the purchase money of the complainant in pursuance of said sale or otherwise.

The said Norcross and Mason claim that they are not liable for the purchase money received by John Williams or William Emerson, and the receiving the same by John Williams or Emerson, was not, by the terms or within the meaning of the decree, the receiving of any portion or share of said purchase under and in pursuance of said sale.

The said Norcross and Mason claim that they are not holden jointly, but severally; that no interest is to be allowed complainant, except from date of his bill.

That we claim as equitable allowance according to the account furnished the master.

WM. H. McCRILLIS,
Solicitor for Norcross and Mason.

FRED. HOBBS, *master*.

Circuit court, for the first circuit and district of Maine.

JOHN DOGGETT, complainant,
vs.
WILLIAM EMERSON, Amos M. Roberts, Isaac Farrar, Nicholas G. Norcross and Joseph W. Mason. } In chancery.

To Frederick Hobbs, esq., master in chancery, and now sitting in the above entitled cause.

Nicholas G. Norcross now moves this court that said William Emer-

son, Amos M. Roberts, and Isaac Farrar, may be examined as witnesses on behalf of said Norcross, to prove that said Roberts received the whole of John Doggett & Co.'s notes and drafts, which he gave in payment of the one-eighth of said township named in said bill of complaint; and also to prove that said Norcross did not receive any part of said John Doggett, or John Doggett & Co.'s notes and drafts for any part of said land. By his solicitor,

WM. H. McCRILLIS.

FRED. HOBBS, *master.*

Oral examination of John Doggett, the complainant, taken before the master, on motion of N. G. Norcross.

1st question. When did you first learn that Norcross and Mason were concerned in this township, or that they received from Emerson any notes?

Answer. I knew nothing of the matter until the commissioners, under the act of the legislature, met at Bangor in June or July, 1841, and learned it only from the proceedings at that hearing. I may have heard rumors of it before that time, but I have no recollection of the purport of such rumors, or where I heard them, but they were a long time after the purchase of the land.

2d question. State whether or not you executed a mortgage of said one-eighth to secure the notes and drafts given for said one-eighth part; and whether Amos M. Roberts had said mortgage.

Answer. I did execute a mortgage as inquired about, as I now think, running to William Emerson, but whether said Roberts had the mortgage, I have no personal knowledge.

A true copy of said examination.

Attest: FRED. HOBBS, *Master.*

And on the twenty first day of said May, the following is filed by the master, viz:

DISTRICT OF MAINE, *ss:*
Circuit court of the United States.

JOHN DOGGETT, in equity,
vs.
WILLIAM EMERSON et al.

And for an amendment of my report returned and filed on the first day of May, 1846, I find that there was cut upon said township, under and in pursuance of said arrangement of September 6, 1845, and October, 1846, by operators thereon, as follows:

By Follett and Reed, up to February 18, 1846 - - 329,931 feet.
By N. H. Dillingham & Co., including one team's work to February 20, 1846, and one team's work to February 21, 1846 - - - - - - 1,720,678 feet.

And these amounts were ascertained to those times, respectively, by

Caleb Lovitt, who acted as scaler. But said logs not having been disposed of at the time of my report, I made no allowance therefor for reasons therein assigned.

And this amendment is made by request of defendants' counsel, they agreeing that it shall be considered, if the court will receive it, as filed on the first day of May, 1846, and that it shall not operate to enlarge the time for taking exceptions to said report on their part.

FRED. HOBBS, *Master in chancery.*

BANGOR, May 21, 1846.

On the twenty-second day of said May, the complainant's solicitors file the following exceptions to said master's report, viz:

Exceptions taken by John Doggett, complainant, to the report of Frederick Hobbs, esq., one of the masters in chancery of this court, to whom the said cause stands referred by a decree made on a hearing thereof, at October term, eighteen hundred forty-five.

Exception 1. For that said master has in and by his said report found and certified, that William Emerson, one of said defendants, had no interest in the land conveyed to the complainant, and was no party to the contract rescinded.

Exception 2. For that said master has not in or by said report found and certified, that William Emerson, one of the defendants, received any portion of the "moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale" ordered by said decree to be rescinded, or charged said Emerson in the account taken by said master with any portion of the moneys paid as aforesaid; whereas said master should have found and certified, that said Emerson received the whole of the moneys paid by the complainant as aforesaid, and should have charged the said Emerson accordingly.

Exception 3. And this complainant (not in any manner waiving any former exception) further excepts, because said master has not, in and by his said report, found and certified, that William Emerson, one of the defendants, received any part of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale ordered by said decree to be rescinded, or charged said Emerson in the account taken by said master with any portion thereof; whereas said master should have found and certified, that said Emerson received one-half of the moneys paid by the complainant as aforesaid, and should have charged the said Emerson accordingly.

Exception 4. And this complainant (not in any manner waiving any former exception) further excepts, because the said master has not in and by his said report found and certified, that William Emerson, one of the defendants, received any portion of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale order-

ed by said decree to be rescinded, or charged the said Emerson in the account taken by said master with any portion thereof; whereas the said master should have found and certified, that said Emerson received one-third of the moneys paid by the complainant as aforesaid, and should have charged the said Emerson accordingly.

Exception 5. For that said master has in and by his said report found and certified, that Amos M. Roberts, one of the defendants, received one-third of the moneys paid as purchase money by the complainant to William Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale ordered by said decree to be rescinded, and has charged the said Roberts in the account taken by said master accordingly; whereas the said master should have found that said Roberts received the whole of the moneys paid as aforesaid, and should have charged the said Roberts therewith.

Exception 6. And the complainant (not waiving any former exception) further excepts to said report, because said master has not, in and by his said report, found and certified, that said defendants, Roberts, Farrar, and Norcross and Mason, as partners, received of said Emerson, or of the complainant through said Emerson, as their agent, one-fourth each, of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale ordered by said decree to be rescinded, and has not charged them therewith in aid of the said Emerson, in the account taken by said master under said decree, which said master ought to have done.

Exception 7. And the complainant (not waiving any former exception) further excepts to said report, that said master has not, in and by his said report, found and certified, that said defendants, Emerson, Roberts, Farrar, and Norcross and Mason, as partners, received of the complainant, one-fourth each, of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale ordered by said decree to be rescinded, and has not charged the said defendants therewith accordingly, in the account taken by said master under and in pursuance of said decree, which said master ought to have done.

Exception 8. And this complainant further excepts to said report, because said master has not in and by his said report allowed and computed the interest on all the sums of money actually paid by the complainant as purchase money, and received by the defendants, under and in pursuance of the contract rescinded, and from the time when said payments were made, which said master ought to have done.

Exception 9. For that said master has not in and by his said report stated any form of a reconveyance to be made by the plaintiff to the said Emerson and his co-owners, of their proportions of the land conveyed to said plaintiff, under and in pursuance of the sale ordered by said decree to be rescinded, but has only stated the form of a reconveyance to be made by said plaintiff to said Roberts, Farrar, and Norcross and Mason.

Wherefore, the said Doggett excepts to the said master's report, and appeals therefrom to this honorable court.

By WILLIS & FESSENDEN,
His solicitors.

On the twenty-fifth day of said May, the solicitor for Norcross and Mason, defendants, files the following exceptions, viz:

Exceptions taken by Nicholas G. Norcross and Joseph W. Mason, two of said defendants, to the report of Frederick Hobbs, esq., a master of said court, to whom this cause stands referred by the decree made herein, bearing date October term of said court, A. D. 1845, whereby it was referred to him to take an account of the moneys paid as purchase money by the plaintiff to the said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale in said decree mentioned, and to consider and report what interest the said Emerson and his co-owners ought to pay to the said plaintiff upon the sum of purchase money by them received respectively, and what equitable allowances and deductions ought to be made to them, or any of them, and to further make a form of conveyance to be made by the plaintiff to the said Emerson and his co-owners of their proportion of said land, when and so soon as they shall have complied with the decree of said court ultimately to be rendered in the premises, with full liberty to examine all or any of the parties on oath touching the premises, and to hear all and any testimony touching said interest and equitable allowances and deductions, and all and any other matters thereby referred to him by the said court, and which report bears date the first day of May, A. D. 1846.

First exception. For that the said master has found, that said Norcross & Mason were parties to the said contract, (made by Williams and with the plaintiff, as mentioned in the said decree,) and that said Norcross & Mason stand chargeable, jointly and severally, as the owners of one-quarter of said township, and are liable, in like manner, to the complainant, as such parties to said contract, for one-third part of the purchase money, as stated in said report; whereas the said master ought to have found, on the contrary thereof, that said Norcross & Mason were not chargeable, as owners or co-owners with said Emerson, of any part of said township, and that said Norcross & Mason were not parties to the said contract.

Second exception. And for that the said master has found, that whatever sum was paid by the complainant to Williams, must be taken and deemed to have been paid to him for the benefit of the owners of the land sold, and that the defendants must be considered as having received the whole sum paid by the complainant, and are chargeable for the same as therein stated; whereas the said master ought to have found, on the contrary thereof, that the said Emerson and his co-owners were chargeable only with the moneys actually paid as purchase money by the plaintiff to the said defendants, and received by them respectively under and in pursuance of the sale; and the said defendants, Norcross

& Mason, were chargeable with nothing, inasmuch as they received no part of the purchase money paid by the complainant, or the proceeds, produce, or avails thereof.

Third exception. For that the said master has found, that, if said Emerson is considered by the court as not having been a party to said contract, nor to have disposed of any part of his interest in said township of land to the complainant, then said Roberts and Farrar, and the firm of Norcross & Mason, are each chargeable and accountable to the plaintiff for one-third of the sum paid by him as purchase money for one-eighth of said township, which said master found to be the sum of seventeen thousand nine hundred and seven dollars and fifty cents, as therein stated; whereas the said master ought to have found, on the contrary thereof, that the said Norcross & Mason were not chargeable for any part of the sum paid by the complainant as purchase money.

Fourth exception. For that the said master has found, that the said complainant paid, as purchase money for one-eighth of said township, the sum of seventeen thousand nine hundred and seven dollars and fifty cents, as therein stated, and that the firm of Norcross were chargeable with one-third part of said sum; whereas the said master ought to have found, on the contrary thereof, that the said complainant paid for said one-eighth part of said township only the sum of fifteen thousand dollars, and in notes and drafts, and ought not to have found that the firm of Norcross & Mason were chargeable with any part of said sum; or if the said defendants, Norcross & Mason, were chargeable with any thing, which they do not admit, but deny, the said master ought to have found, at most, they were chargeable each, severally and not jointly, with one-twelfth part of fifteen thousand dollars.

Fifth exception. For that the said master has found, that, if the court shall hold that said Emerson to have been a party to said contract, and to have been interested in said land sold to the complainant, then that said Emerson, Roberts, and Norcross & Mason, were each liable to the complainant for one-fourth part thereof, as stated in schedule B, in said report; whereas the master ought to have found, on the contrary thereof, that neither said Norcross & Mason, or either of them, were liable or chargeable with any part of the sum; or, if said defendants were chargeable with any thing, which said defendants do not admit, but deny, the said Norcross & Mason were, at most, each severally and not jointly, with one-sixteenth part of said sum of fifteen thousand dollars.

Sixth exception. For that the said master has found, that, if the defendants are not chargeable, on the principle of agency stated in said report, for the sum of $17,907 50, and are only liable for the sum of fifteen thousand dollars, then the said Roberts, Farrar, and Norcross & Mason, or they with said Emerson, in the alternative stated in said report, are liable for said fifteen thousand dollars, stated in schedule B, in said report; whereas the said master ought to have found, on the contrary thereof, that said Norcross & Mason were not chargeable, jointly or severally, with any part of said sum; or, if chargeable, which they do not admit, but deny, the said master ought to have found that they

were chargeable, at most, each severally and not jointly, with one sixteenth part of fifteen thousand dollars.

Seventh exception. For that the said master has found, that the said defendants, Roberts, Farrar, Norcross & Mason, after making all equitable deductions and allowances, except for the lumber of 1845–'6, are indebted to the said complainant in the sum of twenty-five thousand one hundred and fifty-six dollars and twenty-five cents, and that each of the defendants is accountable to the plaintiff as follows:

The defendant Roberts in the sum of -	- $8,385 42
The defendant Farrar in the sum of -	- 8,385 41
The defendants Norcross & Mason in the sum of	- 8,385 41

And that said sums were due from them respectively, as of the first day of May, A. D. 1846, to the complainant for the balance of the purchase money and interest thereon; whereas the said master ought to have found, on the contrary thereof, that said Norcross & Mason, nor either of them, were accountable for any part of said sum of twenty-five thousand one hundred and fifty-six dollars and twenty-four cents, or with the sum of eight thousand three hundred and eighty-five dollars and forty-one cents, and that there was nothing due from the said defendants, Norcross & Mason, jointly and severally, to the said complainant for the balance of the purchase money and interest thereon.

Eighth exception. For that the said master has found, that, if the court should be of opinion that, if $15,000 is the sum for which all the defendants are chargeable as purchase money, then the said Norcross & Mason are jointly and severally chargeable for the sum of $6,770 07; whereas the said master ought to have found, on the contrary thereof, that said Norcross & Mason were not, jointly or severally, chargeable or accountable for the sum of 6,770 07, or for any other sum.

Ninth exception. For that the said master has found, that, if the court should be of the opinion that said defendant, Emerson, upon the terms of the decree, is to be deemed a party to said contract as owner of one-quarter of said land sold to the complainant, then said sums of $25,156 24, or $20,310 23, are to be divided and apportioned on the same principles among said Emerson, Roberts, Farrar, and the firm of Norcross & Mason, as in schedule B in said report is set forth; whereas the said master ought to have found, on the contrary thereof, that said Norcross & Mason ought not to be chargeable with any part or portion of either of said sums.

Tenth exception. For that the said master has found that said Norcross and Mason were parties to the contract made with the said complainant; whereas, the said master ought to have found, on the contrary thereof, that said Norcross and Mason were not parties to the contract made with the complainant, and that neither of them were.

Eleventh exception. For that the said master has found that Moody and Le Breton were not parties to the contract; whereas, the said master ought to have found, on the contrary thereof, that said Moody and Le Breton were parties to said contract.

Twelfth exception. For that the said master has not found that George B. Moody and Edmund L. Le Breton, under the firm of Moody & Le Breton, were the owners of one undivided eighth of said township, and it being one undivided moiety of the said Norcross and Mason's one undivided quarter part of said township, and that said Moody and Le Breton were co-owners with said Emerson of said one undivided eighth of said township; whereas, the said master ought to have found, on the contrary thereof, that said Moody and Le Breton were co-owners with said Emerson and others of one undivided eighth of said township, and one undivided moiety of the quarter part of said Norcross and Mason.

Thirteenth exception. For that the said master has not found that, of the moneys paid as purchase money by the complainant to said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale mentioned in said decree, one-sixth part was received by Moody and Le Breton; whereas, the said master ought to have found, on the contrary thereof, that, of the moneys and notes and drafts paid by the plaintiff to the said Emerson and his co-owners, and received by them, respectively, one-sixth part was received by said Moody and Le Breton.

Fourteenth exception. For that the said master has found that said Moody and Le Breton were not parties to the said contract; whereas, the said master ought to have found, on the contrary thereof, that said Moody and Le Breton were parties to the said contract.

Fifteenth exception. For that the said master has found that the defendants, Norcross and Mason, admitted that they were co-owners of one-twelfth of said eighth sold to the complainant; whereas, the said master, on the contrary thereof, ought not to have found that said Norcross and Mason made any such admission.

Sixteenth exception. For that the said master has found that the defendant, William Emerson, was not owner of any part of the three-fourths of said township sold, and had no interest in the one-eighth of said township sold to the said complainant, and that said Emerson was not a party to said contract; whereas, the said master ought to have found, on the contrary thereof, that said Emerson was the owner of one-half of said township, and was the owner of two-sixths of said three-fourths of said township sold to the complainant; and the defendants, Norcross and Mason, not admitting that said Emerson was not the owner of more than one-quarter part of the eighth of said land sold to the complainant, but insisting that said Emerson was the owner of one-half of said township and one-half of the eighth sold to the complainant, say, that said master ought to have found that said Emerson at least was the owner of one-quarter part of said township and one-quarter part of the eighth sold to the complainant.

Seventeenth exception. For that said master has found that said Emerson was no party to the contract rescinded; whereas, the said master ought to have found, on the contrary thereof, that said Emerson was a party to the contract rescinded.

Eighteenth exception. For that said master has found that said Emerson is not chargeable with any part of the purchase money paid by the plaintiff to the said Emerson and his co-owners, and received by them, respectively, under and in pursuance of the sale of said one-eighth of said land; whereas, the said master ought to have found, on the contrary thereof, that said Emerson was and is chargeable with the whole of the purchase money paid by the plaintiff to the said Emerson and his co-owners, under and in pursuance of said sale.

Nineteenth exception. For that the said master has found that Amos M. Roberts, one of the defendants, is chargeable with only one-third part of the money paid as purchase money by the plaintiff for said one-eighth of said township; whereas, the said master, on the contrary thereof, ought to have found that said Roberts is chargeable with the whole of said sum so paid by the plaintiff.

Twentieth exception. For that the said master has found that the said defendants, respectively, are accountable to the complainant for interest on the principal sum paid by the plaintiff as purchase money only from the time of the payment, which said master found was on the 8th day of June, A. D. 1835; whereas, the said master ought to have found, on the contrary thereof, that said defendants, Norcross and Mason, were not accountable for interest during any period of time; but if they were, (which said defendants deny,) at most they were only chargeable with interest from the date or the filing of the *defendants'* bill in this case.

Twenty-first exception. For that the said master has found that said contract was rescinded, and for the reason of fraud; whereas, the said master ought not to have found that said contract was *not* rescinded and annulled for the reason of fraud on the part of these defendants, Norcross and Mason.

Twenty-second exception. For that said master has cast interest on the amount of the purchase money from June 8, 1835, to May 1, A. D. 1846; whereas, the said master, on the contrary thereof, ought not to [have] allowed any interest; and, without admitting that any interest should be allowed, (which said defendants deny,) they say, at most the master should have allowed interest on the principal sum from date of the complainant's bill.

Twenty-third exception. For that said master has not found that deductions or allowances ought to be made to said defendants on account of depreciation of timber upon said township by reason rotting and depreciating in value, from June 8, 1835, until the 1st day of May, A. D. 1846; whereas, the said master ought to have found, on the contrary thereof, that deductions and allowances should have been made.

Twenty-fourth exception. For that said master has found that said Norcross and Mason, jointly and severally, are chargeable with a part of the purchase money paid by the complainant; whereas, the said master, on the contrary thereof, ought to have found that said Norcross was not chargeable with any part of said money; but if chargeable at all, (which they do not admit, but deny,) say that they are not chargeable jointly, but severally.

Twenty-fifth exception. For that the said master did not allow the defendants for the timber cut from said land by complainant during the winter of 1845 and '6. and refused to consider any evidence on the subject; whereas, the said master, on the contrary thereof, should have heard and considered said evidence, and made allowances for said timber. Wherefore, the said defendants, Norcross and Mason, do except to the said master's said report, and appeal therefrom to the judgment of this court.

By their attorney and solicitor:

WM. H. McCRILLIS.

On the twenty-seventh day of said May, the solicitor for Emerson, Roberts, and Farrar, files the following exceptions, viz:

Exceptions taken by William Emerson, Amos M. Roberts, and Isaac Farrar, three of the above defendants, to the general report of Frederick Hobbs, the master, to whom this cause stands referred, by the decree made herein at the October term, A. D. 1845, of this court, and which report bears date May 1st, 1846.

First exception. For that the said master hath allowed the complainant interest on the amount received by the defendants from the date of the transaction.

Second exception. For that the said master, in his allowance of interest, has misapprehended the grounds upon which the sale was rescinded; that the decree does not justify or support his deductions therefrom.

Third exception. For that the said master refused to take any account of timber cut on said township by the direction or license of the complainant, during the last winter, to consider the evidence thereof offered by defendants, or to make them any allowance therefor.

J. S. ROWE,
Solicitor for Emerson, Roberts, and Farrar.
J. P. ROGERS,
Of counsel for the above.

And at the adjournment of said court, holden on the seventh day of July then next, the following papers and affidavits are filed by the solicitor for Nicholas G. Norcross, one of the defendants, viz:

WOODSTOCK, April 17, 1845.

JOHN FISKE, ESQ.,

DEAR SIR: I forgot when at home to place my discharge in bankruptcy in Mr. Rowe's hands, to be produced in the United States court in the Doggett case. You will find it in my draw in the safe, which I want handed to Rowe, who is engaged in the case, and when he is done with it place it back. The case comes on the first of May, I think. I arrived here yesterday from Boscawen; it commenced snowing yesterday forenoon, and has snowed until to-day at twelve o'clock; I should think a foot had fallen in the woods.

I think it bids fair for a good freshet. It cannot be reckoned upon

as on our river. The lumbermen have been up river as far as Bristol, and purchased all the lumber they can find; it is in great demand.

I, Moses Giddings, of Bangor, of lawful age, depose and say, that I am clerk in the store of Fiske and Norcross, in Bangor, and was in April, 1845. During that month John Fiske was, is, and then was, a partner of Nicholas G. Norcross, handed me the letter hereto annexed, (which letter, bearing no signature, is in the handwriting of N. G. Norcross, and was received by mail by Mr. Fiske, as I have no doubt.) I went to the place named in the letter, and there found the discharge and certificate in bankruptcy of said Norcross therein named; and on the same day, I think, or very shortly after, I called on James S. Rowe, esq., and said to him I had received a request from N. G. Norcross to call upon him with said Norcross' discharge in bankruptcy, to be used in the Doggett case. I handed him the certificate; he took it, and said very well. I asked him to give a receipt to me for it. Mr. Rowe declined to do so, and handed it back, saying that the certificate was unnecessary, as he could use the record at Portland, which would answer as well as the certificate. I expected that Mr. Rowe would attend to the matter. He did not make any condition or ask for any money; said Norcross was at the time in New Hampshire, engaged in the lumbering business. It has happened at other times that said Norcross has written letters home without his signature. The letter is annexed to this deposition.

MOSES GIDDINGS.

DISTRICT OF MAINE, *ss:*

July 4, 1846.

Subscribed and sworn to before me,

JAMES S. ROWE,
Commissioner U. S. C. C.

I, Thornton McGaw, of Bangor, depose and say, that I have no recollection of having been employed or consulted by Nicholas G. Norcross respecting the suit in equity, John Doggett vs. William Emerson and als., now pending in the circuit court of the United States; that I have no claim or charge against him for any services respecting said suit, nor has he ever paid me anything on that account; and that all I ever did respecting said suit was, as I considered, done at the request of some of the other parties, and for their benefit.

THORNTON McGAW.

Question. State what you had to do with the suit, by whom employed, and who paid you.

According to my best remembrance, Mr. Roberts asked me to assist Mr. Rogers in drawing the answers. Mr. Rogers dictated the answers, and I wrote them as he dictated. My impression is that he, Rogers, also requested me to get Mr. Norcross and Mr. Mason to sign and swear to their answers, and that I did so, and delivered them either to Mr. Emerson, Roberts, or Farrar, by whom, as they were present, I sup-

posed myself to be employed to do the writing aforesaid. I was not requested, as I believe, to act as counsel in the case, and did not consider myself as so acting for any person. Mr. Farrar has paid me all I asked him; and I do not remember that either of the others, Emerson or Roberts, have paid, although they have spoken to me on the subject, and expressed a willingness so to do.

THORNTON McGAW.

DISTRICT OF MAINE, *ss:*

JULY 4, 1846.

Subscribed and sworn to before me,

JAS. S. ROWE,
Commissioner C. C. U. S.

I, Jona. P. Rogers, of Boston, in the county of Suffolk, and State of Massachusetts, depose and say, that in the case in equity, Dog-
[L. S.] gett vs. Emerson and als., I was employed as counsel by Messrs. Emerson, Roberts, and Farrar, and their answers were prepared under my supervision, as were also the answers of Messrs. Norcross and Mason. I have no recollection of being requested by either of these last mentioned gentlemen to prepare their answers, or to assist therein. The answer of Mr. Norcross (I speak with no distinct recollection in respect to Mr. Mason's) was prepared with due caution, after repeated interviews with him, and was signed by him without a suggestion of alteration. After the answers were filed in the case, I had no intercourse with Mr. Norcross. I did not consider him as my client, and had no reason to believe he considered me his counsel. The answers to the supplemental bill were prepared and filed in the same manner as the above answers to the original bill. The answer of Norcross to the supplemental bill was waived by counsel, and was not taken.

J. P. ROGERS.

NAHANT, July 9, 1846.

On this tenth day of July, in the year eighteen hundred and forty-six, personally appeared before me the above named J. P. Rogers, who, being duly sworn, made oath that the affidavit by him above signed is true to the best of his knowledge and belief. Witness my hand and seal at Boston.

CHAS. L. WOODBURY,
Commissioner for the U. S. circuit court for the district of Maine.

In the matter or bill in equity, John Doggett vs. Wm. Emerson and als., pending in the circuit court of the U. S.

I, William P. Preble, of lawful age, depose and say, that I was not retained as counsel for Norcross and Mason, or either of them, in the case John Doggett, in equity, vs. Wm. Emerson and als., in the circuit court for the first circuit, and never acted or appeared for them, or either of them. I think their answer was forwarded to me, with those of other defendants, from Bangor, and that, as an act of courtesy, I filed them, but not as their counsel.

WM. P. PREBLE.

CUMBERLAND, *ss:*

JULY 16, 1846.

Sworn to before

W. P. FESSENDEN,
Justice of the Peace.

Circuit court U. S., Maine district. May term, 1846.

JOHN DOGGETT
vs.
WILLIAM EMERSON et als. } In equity.

I, James S. Rowe, on oath do say, that I have been of counsel for Messrs. Emerson, Farrar and Roberts, three of said defendants, from the commencement of said action, and for no other party. I have never been employed, consulted, or retained, by said Norcross and Mason in this case, nor to my recollection in any other case.

I further say, that a short time before I left home to attend this court, at its May term, 1845, the term at which this cause was heard, a young man, to me unknown, came into my office, and handed me a paper, saying Mr. Norcross had written, directing it to be handed to me. I glanced at the paper, and saw that it was Mr. Norcross's certificate of discharge in bankruptcy, and asked why it was sent to me. The messenger replied, that Mr. Norcross said I should want it at Portland. I answered, that if I should have occasion to make use of the facts stated in the certificate, I could find them on the records of the court, and handed back the paper.

Question by W. P. Fessenden, as counsel for complainant.

Did you have any conversation afterwards on the subject with Mr. Norcross? If so, please state that conversation.

Answer. After the decree had been made, Mr. Norcross had a conversation with me on the subject. He expressed himself dissatisfied with my conduct, and his belief that he had suffered from my not acting in his behalf. In addition to stating that I had never been employed by him, I replied, that I thought he had lost nothing, for I was of opinion that the plea of discharge in bankruptcy would not have availed him in this suit. He answered, I did not want your opinion on that point; if I had wanted any opinion, I should have gone to Boston and given fifty dollars to Mr. Rogers, or some other lawyer, for it is worth fifty dollars for any man to look up the law on that subject. I then said, what did you expect me to do? He replied, to file my certificate in the case, and to let the court do what they pleased with it.

Question by same. Did Mr Norcross in that conversation tell you, or give you to understand, that he did not, by sending you the certificate, design to employ you as counsel, or to pay you any fees for your services?

Answer. I have stated the conversation as I recollect it. I can add only this, that I received from it the impression that Mr. Norcross did

not consider any plea necessary, nor expect from me any service but that of a messenger.

Question by same. Did Mr. Norcross, before the hearing, ever caution you not to charge him any fees in the case?

Answer. After the supplemental bill and answers were filed, I told my clients that I wished to see the contract between Norcross and Mason, and Moody and Le Breton. One of them, Mr. Roberts I think, brought Mr. Norcross to my office to give me information about it. He was uncertain whether he had it, but said he would look for it among his papers. I called at the store of Fisk & Norcross several times, to ascertain whether he had found it. In answer to my enquiry, he said he had not made search, but would; for, though he had nothing to do with the defence, he felt friendly to the other defendants, and was willing to aid them. This he said on two occasions; on one of them adding something, the language I do not recollect, which conveyed to me the idea that he intended to rely on his discharge in bankruptcy. The impression which I received at these interviews was, that he was apprehensive that his interference in the defence might render him liable for the costs of defence, and he wished me to understand that he was not to be charged for any services I might render.

State whether or not the said Norcross, when he said that he did not want your opinion, also say that he did not want yours or any other man's, and give as a reason that he was entitled to the opinion of the court, which was all he wanted.

Answer. I understood him that he did not want any man's opinion; and that he supposed the court would act upon the question if the certificate were filed, and that was all that he wanted.

Did you not infer from Norcross said that he expected to bring the question of the certificate before the court for decision?

Answer. I did, and in the way stated.

Did you understand that Norcross was himself to decide the mode or manner of presenting that question; or was you, as his attorney, to adopt the legal and proper mode?

Answer. I understood that all that he supposed to be necessary to be done was, the filing of the certificate as aforesaid, and that that was all he expected me to do.

Did you not understand that Norcross expected you to file or present it to the court in some way that would avail him?

Answer. I have stated the conversation, and my understanding of Mr. Norcross's meaning, as clearly as I am able to do.

What did you understand that the young man who called upon you, as stated in the first answer, wished you to do; and what occasion did you expect to have to use the certificate or record, except for Norcross.

Answer. I supposed that Mr. Norcross wished to avail himself of his discharge in bankruptcy, and had mistaken his counsel. I knew that Mr. Rogers had drawn his answers, and supposed he might be his counsel. And on that supposition mentioned what had occurred to Mr. Rogers when I met him at Portland.

Was not the conversation referred to by you (when Norcross declined to pay) before he obtained his said certificate, and when he was deeply insolvent?

Answer. I cannot say, not knowing the date of his certificate. It was in the summer of 1844.

JAS. S. ROWE.

CUMBERLAND, *ss:*
July 18, 1846. Sworn to before me,

W. P. FESSENDEN,
Just. of the Peace.

I, William H. McCrillis, on oath depose and say, that Nicholas G. Norcross delivered to me a certificate granted to him by the district court of the United States for the Maine district, duly authenticated by the seal of said court, and the signature of the clerk thereof, wherein it was set forth that said Norcross had duly applied to said district court to be declared a bankrupt; that he was by decree of said court duly declared a bankrupt; that he filed a petition in said court, praying for a decree of said court, discharging him from all his debts; and that the court thereafter ordered him to be discharged from all his debts; and that the clerk should certify the same under the seal of the said court, and deliver the same to the petitioner. That said certificate was in common and ordinary form; that said certificate is lost, and I have made diligent search, but cannot find it.

WM. H. McCRILLIS.

STATE OF MAINE,
County of Kennebec, ss: *July* 29, 1846.

Personally appeared William H. McCrillis, and made oath that the within affidavit by him subscribed is true.

Before me, A. R. NICHOLS,
Jus. peace.

In bankruptcy. MAINE DISTRICT, *ss:*

At a district court of the United States begun and holden at Portland, within and for Maine district, on the fifth Tuesday of January, in the year of our Lord one thousand eight hundred and forty-three, before the honorable Ashur Ware, judge of said court.

Be it remembered, that, on the fourteenth day of February, A. D. eighteen hundred and forty-two, Nicholas G. Norcross, of Bangor, in the county of Penobscot, and State of Maine, filed in the office of the clerk of this court his petition, and on the eighteenth day of March following an amendment thereto, stating that he was owing debts in his private right and capacity, and as partner of the late firm of Norcross and Mason, and of the late firm of J. Norcross and Company, and with Jeremiah Bartlett and Joseph W. Mason, under the firm of J. Bartlett and Company, to sundry creditors, and that he was unable to meet and discharge his said debts; and setting forth a list of his creditors, their names, the places of their residence, and the amount due to each, ac-

cording to the best of his knowledge and belief; and also setting forth an accurate inventory of his property, rights, and credits, of every name and description, together with the location and situation of each portion thereof, and applying for the benefit of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, A. D. 1841; notice of which petition was published in two newspapers printed within said district, and designated by the court for that purpose, viz., the American and the Portland Advertiser, twenty days before the hearing of said petition; and on the second day of May, 1842, the said Nicholas G. Norcross was, by a decree of said court, duly declared a bankrupt; and having been thus declared a bankrupt, on the fifth day of July, 1842, he filed with the clerk of the court a petition, and on the fourteenth day of September an amendment thereto, to have decreed and allowed to him a full discharge, and a certificate thereof, from all his debts proveable under his bankruptcy. And now ninety days having elapsed since the day of said decree of bankruptcy, and notice of the pendency of said last mentioned petition having been published seventy days in the two said newspapers designated by the court for that purpose; and it further appearing to the court that the said Nicholas G. Norcross has, in good faith, surrendered to Henry V. Poor, the assignee appointed by the court in this behalf, all his property, and rights of property, with the exception of such necessary household and kitchen furniture, and such other articles and necessaries as the said assignee has designated and set apart for his use, the whole so set apart not exceeding in value three hundred dollars, and excepting also the wearing apparel of the said bankrupt, and that of his wife and children; and that he has complied with all the orders and directions which have, from time to time, been passed by this court touching his bankruptcy, and otherwise conformed to all the requirements of said act; and also that due notice has been given to all the creditors of the said bankrupt who have proved their debts, and that no written dissent to the allowance of a discharge and certificate thereof has been filed by a majority, in number and value, of his said creditors who have proved their debts.

And now, on this twenty-eighth day of November, A. D. 1843, proclamation being made in open court for all creditors, and other persons in interest, to appear and shew cause, if any they have, wherefore the said Nicholas G. Norcross should not be allowed a full discharge from all his said debts, proveable as aforesaid, and a certificate thereof; and, no person appearing to object, it is therefore ordered, decreed, and allowed, by the court here, that the said Nicholas G. Norcross be, and he accordingly is hereby, fully discharged from all his debts owing by him, the said Norcross, and as partner as aforesaid, at the time of the presentation of his petition to be declared a bankrupt. And it is further ordered that a certified copy of this decree, under the seal of this court, be delivered to the said bankrupt as his certificate of discharge.

J. MUSSEY,
Clerk of the court.

UNITED STATES, *Maine district.*

District clerk's office, Portland.

In testimony that the foregoing is a true and correct copy, compared with the original record file in bankruptcy, I, John Mussey, clerk of said court, have hereto set my hand, and affixed the [L. S.] seal of said court, this sixth day of December, A. D. one thousand eight hundred and forty-three, and of the independence of said United States the sixty-eighth.

JOHN MUSSEY.

And the parties were severally heard by their counsel upon the several exceptions to the said report of the said master, and said cause was held by the court for advisement; and on the seventh day of September then next the following decree was passed herein, viz:

MAINE DISTRICT, *ss:*

Circuit court, May term, by adjournment, July 7th, A. D. 1846.

JOHN DOGGETT, plaintiff in equity,
vs.
WILLIAM EMERSON and als.

Upon the coming in of the report, and the supplement thereto made by Frederic Hobbs, esquire, one of the masters of this court, and upon exceptions to the same filed by W. P. Fessenden, counsel for the plaintiff, and by Rogers and Rowe, counsel for said Emerson, Farrar, and Roberts, and by McCrillis and Poor, counsel for Norcross and Mason, defendants, and upon a motion by said McCrillis for leave to file a cross bill to put in, as evidence on behalf of said Norcross, his certificate of discharge in bankruptcy; it is ordered, adjudged, and decreed, that the motion of the said Norcross be dismissed.

And it is further ordered, adjudged, and decreed, that the said report of said master, and all the matters and things therein contained, do stand ratified and confirmed by the order, authority, and decree of this court, to be observed and performed by all the parties thereto according to the tenor and true meaning thereof; excepting, however, so much of the same as is changed and modified by the terms and orders herein contained; and that said report be recommitted to said master for re-examination and further report in the premises, agreeably to the changes and modifications hereinafter mentioned.

And it is further ordered, adjudged, and decreed, that the said Emerson be held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid, deducting however therefrom the proceeds of timber sold, making all due allowances for all proper charges and expenses incurred in regard thereto.

And it is further ordered, adjudged, and decreed, that the master do compute interest at the rate of six per centum per annum on the whole moneys paid, whether paid as principal or as interest, from the times of payment respectively made by said plaintiff to said defendants.

And it is further ordered, adjudged, and decreed, that said Farrar, Roberts, and the firm of Norcross and Mason, be liable in aid and relief of the said Emerson to pay and deliver back to said plaintiff one-third part each of the said whole amount of moneys paid as aforesaid by said plaintiff, after the deductions provided for as aforesaid; but no one of them to be liable for any purchase money received by either of the other defendants.

And it is further ordered, adjudged, and decreed, that the master deduct from said purchase money aforesaid all such sums as shall have been received by said plaintiff from the sale of timber made since the making up of the report of said master as aforesaid.

And it is further ordered, adjudged, and decreed, that said plaintiff do reconvey the same lands set forth in his bill of complaint to the said William Emerson, to be held by him in trust for the use and benefit of the said Farrar, Roberts, and Norcross & Mason, respectively, to be transferred by such due and reasonable conveyance, to each in proportion to his payments, as shall be devised and reported by the master, when and so soon as the balance of said purchase money, actually paid by him, shall be repaid by each, as before provided.

And it is further ordered, adjudged, and decreed, that said plaintiff shall also execute a bond, in such form as shall be reported by said master, conditioned for the payment to said Emerson, for the use and benefit of said defendants, respectively, of such further sums as the said plaintiff shall hereafter receive from the sale of timber remaining unpaid for, so soon as the same shall be received by said plaintiff.

And it is further ordered, adjudged, and decreed, that all the exceptions filed by the parties, respectively, as aforesaid, not sustained by this decree, be, and the same are hereby, overruled and set aside.

And all further orders and decrees are reserved for the consideration of the court.

LEVI WOODBURY,
Asso. Justice of Supreme Court.

September 7th, 1846.

And, thereupon, said report was recommitted to the master, and said cause continued to the next October term of said court.

And now, at this present term, the following agreement is filed, viz:

JOHN DOGGETT
vs.
WILLIAM EMERSON & als. } In equity.

In this cause it is agreed, that objections were seasonably taken to the admissibility of the depositions of Moses Paul and Joseph Hanson, offered by the defendants, on the ground that said depositions were not taken until after the time for taking testimony in said cause allowed by said court had expired.

It is further agreed, that the deposition of John Williams, offered by the complainant, and taken May 4, 1842, before J. W. Metcalf, was

seasonably objected to, on the ground that it had not been taken ing to law and the rules of court. And this agreement is, by c of parties, to make a part of the record in the cause.

It is further agreed, that at the hearing of the cause, both the de, sitions of John Williams were objected to by the counsel for defendants on the ground that said Williams was interested in the result of said cause. This agreement is also, by consent of parties, to be made a part of the record.

W. P. PESSENDEN,
For Complainant.
J. S. ROWE,
For Emerson, Farrar, and Roberts.

Whereupon, on motion, it is ordered, that said agreement be entered of record, and be a record of the objections therein stated.

And, on the fourth day of said term, the additional report of Frederic Hobbs, esquire, appointed master in this cause, was returned, opened, and read, as follows, viz:

DISTRICT OF MAINE, *ss:*

U. S circuit court, October term, 1846.

JOHN DOGGETT, in equity, complainant,
vs.
WILLIAM EMERSON, Amos M. Roberts, Isaac Farrar, and Norcross & Mason, defendants.

Pursuant to a decretal order of this court, made in the above entitled cause, at the adjournment thereof, on the seventh day of July, eighteen hundred and forty-six, whereby the report of the master therein was recommitted to him for a re-examination and further report in the premises; and wherein, among other things, it is ordered, adjudged, and decreed, that the master do compute interest, at the rate of six per centum per annum, on the whole monies paid, whether as principal or interest, from the times of payment respectively made by said plaintiff to said defendants; and that said Emerson be held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid, deducting, however, therefrom, the proceeds of timber sold, making all due allowances for all proper charges and expenses incurred in regard thereto; and that the master deduct from said purchase money all such sums as shall have been received by the plaintiff from the sale of timber made since the making up of the report of said master, on the first day of May, A. D. 1846; and wherein it was ordered, that the master should devise and report the form and mode of conveyance from said complainant to said Emerson, and the form of a bond to be executed by said complainant to said Emerson for the purposes of said decree, as therein is set forth.

I, Frederick Hobbs, the master aforesaid, having been attended by the complainant Doggett, and examined him on oath touching the premises, do now submit the following report:

And it is further ordered, adjudged, and decreed, that said Farrar, Roberts, and the firm of Norcross and Mason, be liable in aid and relief of the said Emerson to pay and deliver back to said plaintiff one-third part each of the said whole amount of moneys paid as aforesaid by said plaintiff, after the deductions provided for as aforesaid; but no one of them to be liable for any purchase money received by either of the other defendants.

And it is further ordered, adjudged, and decreed, that the master deduct from said purchase money aforesaid all such sums as shall have been received by said plaintiff from the sale of timber made since the making up of the report of said master as aforesaid.

And it is further ordered, adjudged, and decreed, that said plaintiff do reconvey the same lands set forth in his bill of complaint to the said William Emerson, to be held by him in trust for the use and benefit of the said Farrar, Roberts, and Norcross & Mason, respectively, to be transferred by such due and reasonable conveyance, to each in proportion to his payments, as shall be devised and reported by the master, when and so soon as the balance of said purchase money, actually paid by him, shall be repaid by each, as before provided.

And it is further ordered, adjudged, and decreed, that said plaintiff shall also execute a bond, in such form as shall be reported by said master, conditioned for the payment to said Emerson, for the use and benefit of said defendants, respectively, of such further sums as the said plaintiff shall hereafter receive from the sale of timber remaining unpaid for, so soon as the same shall be received by said plaintiff.

And it is further ordered, adjudged, and decreed, that all the exceptions filed by the parties, respectively, as aforesaid, not sustained by this decree, be, and the same are hereby, overruled and set aside.

And all further orders and decrees are reserved for the consideration of the court.

LEVI WOODBURY,
Asso. Justice of Supreme Court.

September 7th, 1846.

And, thereupon, said report was recommitted to the master, and said cause continued to the next October term of said court.

And now, at this present term, the following agreement is filed, viz:

JOHN DOGGETT
vs.
WILLIAM EMERSON & als. } In equity.

In this cause it is agreed, that objections were seasonably taken to the admissibility of the depositions of Moses Paul and Joseph Hanson, offered by the defendants, on the ground that said depositions were not taken until after the time for taking testimony in said cause allowed by said court had expired.

It is further agreed, that the deposition of John Williams, offered by the complainant, and taken May 4, 1842, before J. W. Metcalf, was

seasonably objected to, on the ground that it had not been taken according to law and the rules of court. And this agreement is, by consent of parties, to make a part of the record in the cause.

It is further agreed, that at the hearing of the cause, both the depositions of John Williams were objected to by the counsel for defendants, on the ground that said Williams was interested in the result of said cause. This agreement is also, by consent of parties, to be made a part of the record.

W. P. PESSENDEN,
For Complainant.
J. S. ROWE,
For Emerson, Farrar, and Roberts.

Whereupon, on motion, it is ordered, that said agreement be entered of record, and be a record of the objections therein stated.

And, on the fourth day of said term, the additional report of Frederic Hobbs, esquire, appointed master in this cause, was returned, opened, and read, as follows, viz:

DISTRICT OF MAINE, *ss:*

U. S circuit court, October term, 1846.

JOHN DOGGETT, in equity, complainant,
vs.
WILLIAM EMERSON, Amos M. Roberts, Isaac Farrar, and Norcross & Mason, defendants.

Pursuant to a decretal order of this court, made in the above entitled cause, at the adjournment thereof, on the seventh day of July, eighteen hundred and forty-six, whereby the report of the master therein was recommitted to him for a re-examination and further report in the premises; and wherein, among other things, it is ordered, adjudged, and decreed, that the master do compute interest, at the rate of six per centum per annum, on the whole monies paid, whether as principal or interest, from the times of payment respectively made by said plaintiff to said defendants; and that said Emerson be held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid, deducting, however, therefrom, the proceeds of timber sold, making all due allowances for all proper charges and expenses incurred in regard thereto; and that the master deduct from said purchase money all such sums as shall have been received by the plaintiff from the sale of timber made since the making up of the report of said master, on the first day of May, A. D. 1846; and wherein it was ordered, that the master should devise and report the form and mode of conveyance from said complainant to said Emerson, and the form of a bond to be executed by said complainant to said Emerson for the purposes of said decree, as therein is set forth.

I, Frederick Hobbs, the master aforesaid, having been attended by the complainant Doggett, and examined him on oath touching the premises, do now submit the following report:

The complainant paid the defendants money, principal and interest, on the securities, and at the times and in the manner following, to wit:

1. On the acceptance of John Doggett's draft on John Doggett & Co., dated June 8, 1835, payable in sixty days, to the order of John Williams, and by said Williams and the defendant Roberts endorsed in blank, and paid by the complainant on the tenth day of August, 1835, for the sum of -		$6,031 84
This sum includes interest for sixty days, and grace, and I have allowed for interest on this sum, 11 years, 1 month, 22 days, to Oct. 1, 1846 - -		4,031 26
2. The note of John Doggett & Co., dated June 8, 1835, payable in one year, with interest annually, to Wm. Emerson, or order, and endorsed, without recourse, by Wm. Emerson and A. M. Roberts, and paid by the complainant John Doggett, for the sum of - - -	$5,969 16	
One year's interest on the same, paid June 8, 1836 - - - -	358 14	
One year's interest on a note of like date, tenor, endorsement, and amount, hereinafter set forth, paid by complainant on the 8th day of June, 1836 - -	358 14	
		6,685 44
I have allowed for interest on this sum, 10 years, 3 months, 22 days, to Oct. 1, 1846 - -		4,136 05
3. The note of John Doggett & Co., dated June 8, 1835, payable in two years, with interest annually, to Wm. Emerson, or order, and endorsed, without recourse, by Wm. Emerson and A. M. Roberts, and paid by the complainant on the 8th day of June, 1837, for the sum of - -	$5,969 16	
One year's interest on the same, paid by complainant on the 8th day of June, 1837	358 14	
		6,327 30
I have allowed for interest on this sum, 9 years, 3 months, 22 days, to Oct'r 1, 1846 - - -		3,534 84
4. This sum paid Dec'r 10, 1844, by complainant for taxes on $\frac{5}{9}$ of the land in controversy, allowed in former report, and now brought forward for a more plain statement of the subject, and to bring up the interest account to the date of this report - - - -	$35 06	
I have allowed interest thereon from Dec'r 10, 1844 - - - -	3 80	
		38 86

This sum paid for taxes of 1845, on $\frac{5}{9}$ of the land in controversy, paid by complainant on March 6, 1846, $\frac{5}{9}$ of said sum being - - -	$8 95	
I have allowed interest thereon from March 6, 1846, to Oct'r 1, 1846 - -	0 30	
		9 25
		$30,794 84

Equitable allowances and deductions.

This sum ascertained by the former report of the master - - - - -	$4,494 77	
To which is added, for the sum received by the complainant on sale of timber since the former report of master, $\frac{5}{9}$ of $618 83 - - - - -	343 80	
		4,838 57
		$25,956 27

I therefore find, in pursuance of said decree of July 7, 1846, that the sum for which said Emerson is held directly liable to the complainant, is twenty-five thousand nine hundred and fifty-six dollars and twenty-seven cents.

I further find that said Amos M. Roberts, Isaac Farrar, and Norcross and Mason, are liable, in aid and relief of said Emerson, each for the sum of $8,652.09.

I further report the following as the form of the deed by which, under and by virtue of said decree, the complainant is to convey the lands in said decree mentioned to said Emerson, to wit:

Form of deed.

Know all men by these presents, that I, John Doggett, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, in consideration of dollars, to me paid by William Emerson, of Bangor, in the county of Penobscot, and State of Maine, the receipt whereof I do hereby acknowledge; and in pursuance of a decree of the circuit court of the United States for Maine district, made on the seventh day of July, A. D. 1846, in a case in equity wherein John Doggett is complainant, and William Emerson, Isaac Farrar, Amos M. Roberts, and Norcross and Mason, are defendants, do hereby remise, release, bargain, sell and convey, and forever quit claim, unto the said William Emerson, his heirs and assigns, forever.

Here insert the estate.

To have and to hold the same, together with all the privileges and

appurtenances thereunto belonging, to him, the said Emerson, his heirs and assigns, forever, in trust for the use and benefit of said Farrar, Roberts, and Norcross and Mason, for each in proportion to his payments, and upon the terms, conditions, and limitations in said decree mentioned, reference thereto being had for a more full and exact knowledge thereof.

And I do covenant with the said Emerson, his heirs and assigns, that I will warrant and forever defend the premises to said Emerson, his heirs and assigns, forever, against the lawful claims and demands of all persons claiming by, through, or under me, and not further or otherwise.

In witness whereof, I, the said John Doggett, have hereunto set my hand and seal, this day of , in the year of our Lord one thousand eight hundred and forty ———.

, [SEAL.]

Signed, sealed and delivered, in presence of

, *ss:* 184 , personally appeared the above-named John Doggett, and acknowledged the above instrument to be his free act and deed.

Before me,

,
Justice of the Peace.

I do further report, that the form of conveyance from said Emerson to said Farrar, Roberts, and Norcross and Mason, respectively, shall be in form hereinbefore set forth, except the clause in the *habendum* relating to the trust aforesaid.

I do further report, that the bond to be executed by said complainant, and delivered by him to said defendants, be in form following:

Form of bond.

Know all men by these presents, that I, John Doggett, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, am held and stand firmly bound and obliged unto William Emerson, of Bangor, in the county of Penobscot, and State of Maine, in the sum of one thousand dollars; to the payment of which, well and truly to be made, to the said Emerson, his executors, administrators, or assigns, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Witness my hand and seal, this day of , A. D. 184 .

The condition of this obligation is such, that whereas, by a decree of the circuit court of the United States for Maine district, passed on the 7th day of July, A. D. 1846, in a case in equity wherein John Doggett is plaintiff, and William Emerson, Isaac Farrar, Amos M. Roberts, Nicholas G. Norcross and Joseph W. Mason, are defendants, it was, among other things, decreed that the plaintiff should execute a bond in such form as should be reported by a master, conditioned for the payment to said Emerson for the use and benefit of said defendants,

Farrar, Roberts, and Norcross and Mason, respectively, of such further sums as the plaintiff shall hereafter receive from the sale of timber remaining unpaid for, so soon as the same shall be received by said plaintiff.

Now, therefore, if said John Doggett, plaintiff as aforesaid, shall well and truly pay the money, and do and perform all things required to be paid and done and performed by him, by virtue of the terms of said decree hereinbefore recited, when thereto reasonably required by said Emerson and others, then this obligation shall be void, otherwise shall remain in full force and virtue.

, [SEAL.]

Signed, sealed, and delivered, in presence of

And the said complainant is entitled to recover his costs against the said defendants, Emerson, Farrar and Roberts, for their three exceptions taken to the master's report and overruled by the court.

And said complainant is further entitled to costs against said defendants, Norcross and Mason, for twenty-three of the twenty-five exceptions taken by them to the master's report, and by the court overruled, the seventeenth and eighteenth exceptions only being sustained by the court. And said last named exceptions being substantially taken by the complainant against said report, and sustained by the court, I do not consider said Norcross and Mason entitled to recover costs against the complainant on said seventeenth and eighteenth exceptions, sustained as aforesaid. And the said defendants, Emerson, Farrar, Roberts, and Norcross and Mason, are entitled to recover their costs against said complainant on the third, fourth, fifth, sixth, and seventh exceptions taken by him to the master's report, and by the court overruled; and said defendants are liable to pay costs to the complainant for the first, second, eighth, and ninth exceptions taken by him to said report, and by the court sustained. All of which is respectfully submitted.

FRED. HOBBS,

October 5, 1846. *Master in Chancery.*

Whereupon the solicitor for the plaintiff moves the court for the acceptance of the same, and said report is accepted; and it is ordered by the court, that the fees of the master in this cause, as taxed in the additional report, be allowed, and that the same be paid equally by the plaintiff and the defendants; the whole amount to be taxed by the prevailing party in his bill of costs, and credit given in the same for the amount advanced by the other party; and, on the fifth day of said October, the final decree in said suit in equity was read, passed, and promulged, as follows, to wit:

MAINE DISTRICT, *ss:*

Circuit court, October term, 1846.

JOHN DOGGETT, plaintiff,
vs.
WILLIAM EMERSON and als., defendants, } In equity.

Upon the coming in of the report made by F. Hobbs, esquire, one

of the masters of this court, dated October fifth, eighteen hundred and forty-six, in pursuance of a decretal order of this court made at an adjournment of the last May term, held July seventh, eighteen hundred and forty-six, by which said report was recommitted to said master, with certain directions contained in said order; and upon a motion by the counsel for complainant, that said additional report should be accepted, and all exceptions thereto being waived by the counsel for defendants, it is ordered and decreed, that the said report, and all the matters and things therein contained, do stand ratified and confirmed by the order, authority, and decree of this court, to be observed and performed by all the parties thereto, according to the tenor and true meaning thereof. And it is further ordered, adjudged, and decreed, that the said William Emerson be, and he hereby is, held directly liable to the said John Doggett in the sum of twenty-five thousand nine hundred and fifty-six dollars and twenty-seven cents, with interest thereon from and after October first, eighteen hundred and forty-six.

And it is further ordered and decreed that the other defendants be, and they are hereby, held directly liable to the said John Doggett, in aid of the said William Emerson, in the following sums, viz:

Amos M. Roberts in the sum of eight thousand six hundred and fifty-two dollars and nine cents, with interest thereon from and after October first, eighteen hundred and forty-six.

Isaac Farrar in the sum of eight thousand six hundred and fifty-two dollars and nine cents, with interest thereon from and after October first, eighteen hundred and forty-six.

Nicholas G. Norcross and Joseph W. Mason jointly, in the sum of eight thousand six hundred and fifty-two dollars and nine cents, with interest thereon from and after October first, eighteen hundred and forty-six.

And it is further ordered and decreed that the plaintiff have executions, for the sums above named, against each of said defendants, and for his costs; the said sums when levied upon such executions, to be brought, or paid, into the registry of this court, and to be delivered over to the said John Doggett, upon his due execution of the further order herein contained.

And it is further ordered, adjudged, and decreed, that the said John Doggett execute and file with the clerk of this court a bond, in the form reported by the master, for the repayment of any monies that may be hereafter received by him for any timber heretofore cut on the land purchased of the defendants, as ordered in the aforesaid decretal order of July seventh, eighteen hundred and forty-six; the said bond to be delivered by the clerk to said Emerson for the use of said defendants, when they shall have fully complied with the orders herein contained.

And it is further ordered, adjudged, and decreed, that the complainant be entitled to receive any monies that may, from time to time, be paid into the registry of this court, under and by virtue of this decree, upon the execution and delivery to the clerk of this court of a deed, or deeds, as directed in the decretal order aforesaid, and in the form report-

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ed by the master, of such part of said land purchased of the defendants as shall be paid for by the amount so received, in the proportion of said amount to the whole sum hereby ordered to be recovered, with interest as herein before provided.

LEVI WOODBURY,
Associate Jus. of Supreme Court.

I not having heard, or taken a part, in the adjudication of this suit, do not sign the decree.

ASHUR WARE.

And after the passing of this decree, to wit, on the same day, the solicitors for the said defendants file the following prayers for appeal therefrom to the Supreme Court of the United States of America, next to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, viz:

MAINE DISTRICT, *ss:* *Circuit court.*

JOHN DOGGETT, complainant,
vs.
WILLIAM EMERSON, Isaac Farrar, Amos M. Roberts, Nicholas G. Norcross, and Joseph W. Mason, deft's., } In equity.

And now, after final decree, the said William Emerson, Isaac Farrar, and Amos M. Roberts, being here in court, claim an appeal to the Supreme Court of the United States of America, next to be held at Washington, so far as relates to themselves respectively,

By JAS. S. ROWE, *their solicitor.*

MAINE DISTRICT, *ss:* *Circuit court.*

JOHN DOGGETT, complainant,
vs.
WILLIAM EMERSON, Isaac Farrar, Amos M. Roberts, Nicholas G. Norcross, Joseph W. Mason, defend'ts., } In equity.

And now, after final decree, the said Nicholas G. Norcross and Joseph W. Mason, being here in court, claim an appeal to the Supreme Court of the United States of America, next to be held at Washington, so far as relates to them respectively.

By JOHN A. POOR,
WM. H. McCRILLIS,
Their solicitors.

Upon the filing of the foregoing prayers, together with the bond of said Emerson, Farrar, Roberts, and Norcross, to prosecute the said appeals, and which bond is approved, the said appeals are respectively allowed.

UNITED STATES OF AMERICA,
Maine district, ss:

I, John Mussey, clerk of the circuit court of the United States for the first circuit, for Maine district, do hereby certify the foregoing, contain-